Storytelling in Litigation

Don't give them a vacation slideshow

BY MICHAEL F. YOSHIBA, ESQ.

How many of you would really look forward to sitting down with your closest friends and watching a slideshow of their latest vacation, with the slideshow lasting a full 7 to 10 days? And before starting the slideshow, you get a 30- to 60-minute preview of the hundreds of vacation pictures and videos. And you end up sitting through two different slideshow versions of what happened on the trip. Then, at the end of the two slideshows, you will get a 50-page set of written instructions of the rules on how to decide which presentation you believe was the best and most accurate. Welcome to being summoned to court and being selected as a juror in an eminent domain case.

Irreconcilable Dispute Requires Your Assistance Audience as a Juror

As a juror on an eminent domain case, you will get to hear the government and a property owner arguing over the facts surrounding the appropriate amount of money owed to the property owner for the property rights being condemned by the government. Clearly, it's never as exciting as we would like them to believe. Witnesses for both sides will be paraded before the jurors day-after-day for however long is necessary — as determined by the parties and the judge. Jurors are tasked

to give their fullest attention and to listen carefully without prejudgment or bias. Simply put, they are a captive audience for the trial duration and jury deliberation.

What Is the Story?

This isn't a bookstore or movie theater where the jurors can individually choose the genre of story being presented. The story line is chosen for the jury, and the attorneys are the directors of how the story will be conveyed. It will certainly not be a thriller, horror flick or action-adventure. There may be some drama, but even in best of cases, it will only be an interesting documentary. The best documentaries are made interesting by identifying a central protagonist and antagonist carrying the story from beginning through the end. The acquiring agency in eminent domain cases are easily cast as the antagonist bad actors, and the property owners are the protagonist innocent victims.

All participants in jury trials will play key roles. Witnesses provide information and context through statements and documents. Jurors are asked to critique all witnesses based upon their presentation, demeanor, accuracy and perceived reliability. Witnesses and their testimony can be likeable, relatable, memorable and trustworthy, or the opposite.

Jury Is Your Audience

The best presentations by attorneys help the jurors and judges recall references to evidence that makes their cases successful. Successfully presented cases include meaningful and strategic repetition of helpful clues, key facts and important arguments pointing to the major underlying case themes. Be sure to identify and distinguish why your witnesses, appraisers and experts are more experienced, clearer and more careful with presenting facts and formulating opinions. Take care to highlight the strengths of your expert and the significant deficiencies of the opposing experts. Allow your witnesses the opportunity to demonstrate their credibility, accuracy and knowledge.

Have a sincere belief in the reasonableness of your position on facts and law. Though the attorneys don't testify and anything stated by the attorneys cannot be evidence, it will become obvious if the attorney is not passionate about their advocacy for the client's position when speaking in front of the jury. Words to any story are made more interesting by inflection, animation and even silent pauses between statements.

The demeanor of the witnesses and attorneys play an important part in the story's presentation. Judgments will be made concerning whether each participant is emotional or stoic, has correct or incorrect posture, makes or refuses eye contact, has a loud or diminutive voice or exhibits any disrespectful conduct.

Presentation Vehicles

Modern trials use many different media vehicles to present to juries. Video monitors, courtroom audio systems and technology to accommodate in-court and remote testimony and appearances. All courts require that documentary evidence be electronically provided to the court in advance of the start of trial. Electronic copies of document will be displayed on the courtroom monitors by trial technicians. Attorneys prepare an advance script of what will be displayed in court for each witness testifying thereupon. The most effective way to present information to a jury is by use of well-prepared visual evidence. Visual evidence is made using photographs, videos, highlighting portions of important documents and the creation of key event timelines.

At the end of the case, the jury as the audience should be able to clearly recall the important clues left along the way and supporting the desired verdict. The movie "Sixth Sense" ended with the audience given short clips from the movie reminding them of the important visual and statement clues left for the viewer throughout the movie. This is similar to the attorney's story summation in closing arguments.

Final Observations To Consider

Expect the jurors to notice anything and everything. Proper costume design for your storytelling is important — don't be a distracting sideshow. Dressing and acting the part for your roles as attorney and witness are important. Be self-aware of your personal appearance, avoid disheveled wrinkled clothing, shoes in rough condition, luxury brand jewelry and accessories, distracting hair colors and styles and excessive cologne or perfume.

At end it's not your decision or verdict, but if done right, your story and presentation will inspire jurors to argue for your client in the jury deliberation room out of your presence. Be efficient and do everything in your control to maximize your advocacy in the minimum amount of time allowed. Give the jury what they need and deserve — and not a vacation slideshow. ✪

Michael F. Yoshiba is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon. You can contact Michael with any questions at myoshiba@rwglaw.com.