

LITIGATION

By: Keith A. Langley

Trials and tribulations

Disputes at times proceed all the way to factfinders, as shown by being in the middle of a four-month arbitration. Lessons are reinforced on persuasion, themes, and on presenting virtually.

Persuasion

Persuasion is key in any trial. The guiding principal is KISS: keep it short and simple. Persuade multiple times with multiple witnesses. Use photographs, timelines, show the issues and the impact to the parties.

Themes

Trial themes should be equitable and short. Fairness assumes a key role. The decision makers want to do the right, fair thing. Showing contemporaneous fairness is critical. It always helps to show that your actor cared and tried to do the right thing as she or he understood it at the time.

Zooming In

Safety and health are key. In the time of COVID and breakthrough COVID cases, some or all of the trial may be virtual. Focus on the quality of audio and video of witnesses to best present the case to factfinders. Preparing audio visual resources is vital. Explain to the witness who the players are and the role of each including the arbitrators or the judges. Gently explain that when an objection is made the witness should stop talking and wait for a ruling. The appearance and demeanor of the witness are very important. Work with the witness to be polite and make a point. The point can be made without being argumentative. The arbitrators, judge, and jury are determining the credibility and the impact of the witness and advocate.



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To "Go Green", our firm uses recyclable paper or ceramic cups and no longer uses Styrofoam cups. In addition, we have adopted a less-paper office environment.

We hope that these changes make big differences in the future.

Well done is better than well said.

- Benjamin Franklin



Audio

The sound input device, the microphone, deserves much attention. Sound quality often is compromised both in person and virtually. The witness and the questioning lawyer must project sound unimpeded by distractions, missed words, and missed phrases. For virtual presentation consider using a lavalier microphone, which is simple and requires only a plug-in to the USB port.

Video

Seeing the witness and seeing the decision makers (arbitrators, judge, jury) is very important to assess body language. Considerations include background, use of a high-quality webcam such as a Logitech Brio, to locate the webcam at eye level so the subject is looking straight on, not up or down. Work to present quality seamless portions of video depositions of witnesses to persuade. When possible, use software which keeps the subject in the center of the video, for example iPad Pro has a new feature called "Center Stage" that takes video to the next level. The front camera follows the subject as weight shift occurs in a chair, zooms in on the face, keeps the subject in the middle of the frame, even allowing the subject to get up and walk around the room and the camera to follow. When another person walks into the view, the camera zooms out to add them. Center Stage works in WebEx, Zoom, Google Meet and can be activated on FaceTime or Microsoft Teams through settings.

Practice

The best points to the factfinder are made early - practice these often. Practice on issues, dates, names, and events and determine the best order of the points to be made to create maximum persuasion with the fact finder. Trial is very difficult for each participant. The witness will be stressed and practice will lessen that stress somewhat and improve performance.

As always, build relationships, understand party motivations, and in all things seek to persuade, practicing often. Hard work and preparation leading up to the trial can create a dramatic successful effect at trial in persuading and affecting the fact finder. Trial is the opportunity to convince regarding the story and position of the key player. The advocate must know the issues, the story line, the players, and the law. The advocate must adjust his or her tone and demeanor to solidify and create relationships to make it easier for the fact finder to rule positively for the advocate's position.

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