

Trial as Theater by Valerie Kellner

One, Two, Three...Action. That is how I how approach a trial. Trying a case has many of the same components of making a movie. In order to have an award-winning movie, you have to have a compelling theme (your defense); screenplay (questioning); prepared actors (witnesses and experts); perfect editing (when and if to call certain witnesses); special effects (exhibits) and more importantly, a director prepared to put on the show (the trial attorney). A successful trial, like a successful film, means having each of these components work together so you can win over your audience (jury).

Director (Trial Attorney): The lead trial lawyer is the director who oversees the narrative of the entire movie. The director is responsible for the quality of the screenplay, casting and preparing the actors, choosing the props and overseeing the overall narrative of the movie. The director's vision of the film makes the movie a success and the director needs to have a clear and concise vision so the audience can understand and enjoy the movie. The same thing is true for you as a trial attorney. It is your vision that determines the narrative of the trial. You are responsible for translating your defense into a simple and understandable version of events through witnesses, experts and exhibits so the jury can understand and get behind your case.

Themes (Defenses): One of the most important aspects of a movie is the theme. The theme must be concise and simple. The trial attorney will continually come back to the theme during the trial. As the trial attorney, you must make complex themes understandable to the jury. Such as "the product was not defective since it had the required warnings." As the trial attorney, you will be presenting your theme in your opening, when questioning on direct, cross examination of witnesses and experts, as well as your closing. In a movie, the audience must understand the story they are being told by the actors; why the actors behaved as they did and ultimately convince the audience to route for the main character. As the trial attorney, the jury must understand your defense; why your client acted/reacted the way that they did and ultimately, convince the jury to side with your client.

Screenplay (Questioning and Order of witnesses): One of the ways to present the theme of a movie is through the screenplay. The screenplay is the actual dialogue for the movie. In a trial, the screenplay is the testimony elicited through the direct and cross examination of the witnesses. You want your theme repeated or reinforced through testimony before the jury. The order of witnesses is also important as you want your strongest witness to testify last as it will be last words

the jurors will hear from your client. The order of witnesses, the testimony from the cross and direct examinations as well as the tone of the questioning will be key in presenting your theme.

Cast (Witnesses and Expert witnesses): The actors in a movie must prepare to present the dialogue from the screenplay. There is no room for improvising. The actors must rehearse with the director. For a trial, preparation of the witnesses and experts is key to ensure they present and testify as expected. The witnesses and experts must be prepared extensively before the trial starts. You must rehearse, rehearse and rehearse with your witnesses and experts. The witnesses and experts should be prepared in how to respond to questions on direct and how to handle cross examination. This preparation must take place before the trial starts. The preparations will give your witnesses and expert the confidence to testify before the jury and present your defense consistent with the theme of the trial. You never want your witnesses or experts going off script.

Special Effects (Exhibits): Imagine Jurassic Park without the dinosaurs or Star Wars without the light-saber battles. The special effects used in a movie are very important in helping present the story or characters. In a trial, the exhibits are extremely important in presenting evidence through visual means. A trial attorney must select exhibits to explain the defense. Whenever possible, use demonstrative exhibits. The use of exhibits will help your witnesses explain what happened and assist the jury in understanding what happened. In a product defect case, bring an exemplar of the product or show animation of an accident reconstruction. Exhibits can be fancy and high tech or you can draw on an easel. Every visual you use will be invaluable to your trial.

Call Times and Location (Appearing at Trial): The cast and crew need to know the location of filming as well as what time they need to be on set. As the trial attorney, you need to make sure your witnesses are familiar with the courthouse including parking and security procedures. Also, the witnesses must know they must be on time. You never want to make the Judge or jury wait for a witness. Like a director on the set, the trial attorney must never be late.

Editing (Witness to call or not): A director must edit a movie so unnecessary dialogue or characters are taken out in order to enhance the story line as well as recognizing the length of the movie. During a trial, as the trial attorney, you must recognize certain arguments or witnesses may no longer be relevant or necessary to your defense. You may want to scrap questions, or whole parts of a cross

examination depending on how the trial is proceeding. You may need to edit them out so you can keep your defense efficient and the jury focused. Do not be afraid to make changes on the fly if it helps achieve clarity and brevity.

Acceptance Speech (Verdict): Once you receive the verdict, you need to be gracious no matter what. Everyone is watching you-the Judge, jurors, client and fellow attorneys. If you win the trial, you need to make sure you are gracious in accepting your verdict. During any award show, the camera focuses on expressions of actors who did not win. Given they are professionals, they never show their disappointment. If the verdict goes in favor of the plaintiff, do not show your disappointment in the courtroom. And, no matter the result, you should shake your opponent's hand and thank the Judge, the Judge's staff and jurors for their time and effort, win or lose.

And that is a wrap!

Director.....Valerie Kellner
Screenplay..... Valerie Kellner
Film Editing..... Valerie Kellner
Special Effects.....Valerie Kellner

Here is my check list before trial:

- 60 days:
 - Client, witnesses and experts are put on notice of the trial date including time, date and location
 - All Client internal pre-trial reports are completed
 - All deposition transcripts must be read and summarized
 - All exhibit are identified
 - Trial preparation meetings are scheduled with witnesses and experts
 - Trial team is identified

- 45 days:
 - All non-party witnesses are subpoenaed
 - All Exhibit are pre-marked
 - Travel accommodations are made
 - Finalize any MIL's (motions in limine) to be filed
 - Anticipate MIL to be filed by opposing party

- 20 days:
 - Meeting with client witnesses and experts
 - Any demonstrative exhibits are completed
 - Video/trial person secured to present exhibits

- Direct Examination completed
- Cross Examination completed
- Confirm non-party witness have been served and will be attending trial. Obtain cell phone numbers.
- Have a list of the names of everyone involved in the trial with their email and phone numbers for easy access

- 10 days:
- Additional meeting with client witnesses and experts to finalize testimony
 - Run through with Video/trial person regarding which exhibits to be used with each witness
 - Obtain a copy of juror questionnaire
 - Confirm Jury Procedure (How many jurors, Judge involved in voire dire, how many strikes)
 - Continue to fine tune cross and direct examinations
 - Prepare for MIL arguments
 - Have individual notebook made for each witness including direct/cross examination questions; deposition testimony if previously deposed and for experts, a copy of their expert report and cv's
 - Confirm date, time and location with all witnesses

Night before Trial: Get a good night sleep