

Tell it to the Judge ... or the Jury ... or the Arbitrator? Before you tell your story ... know your audience!

1. When selecting an audience for your case, ask yourself, “Is my case strongest on the law, the facts, or a fundamental notion of what is fair?” If your case is strongest on the facts, or if you think your best chance of prevailing comes from a sense of what is fair, you likely will want to tell your story to a jury. If you decide you are better suited relying on strict legal principles or affirmative defenses, selecting a bench trial likely will be the best option.
2. Choosing an arbitrator as your audience can also be wise if: you want to keep your case confidential; you are an employer, a large manufacturer, or other defendant that a jury might not always look favorably upon; your client is cost conscious; you want to limit discovery; you want a faster resolution; or your subject matter is complex or requires a particular background to adjudicate. But beware – choosing arbitration puts your case in the hands of a single fact-finder whose decision will be very difficult to vacate or reverse on appeal.
3. How to tell an effective story depends on your audience. With a jury, storytelling is paramount. You need a coherent story with a beginning, middle, and end. Develop 3-5 case themes, and emphasize emotions that drive your story. Focus your story around what is fair, and craft your narrative around it. With a judge, you want to find the most efficient way to tell your story. Eliminate unnecessary case details and try to stipulate to as many facts as possible prior to trial. You still need your case themes, but keep the story moving and focus less on the drama than you typically would in telling your story to a jury or arbitrator.
4. In arbitration, you can focus on the pizzazz of your story just as you would with a jury. Utilize visual aids, keep the arbitrator entertained, and anchor your story around a sense of equity and fairness. You likely can conserve your energy on technical legal points and rules of evidence; by and large, an arbitrator is going to allow reasonably proffered evidence to come in.
5. If you need to tell your story to a Zoom audience, you have to be comfortable with the technology. Make sure you are well lit and your background is easy on the eyes. Invest in a high-quality camera. Learn how to display and highlight exhibits. Practice with your witnesses. And use video, audio, demonstratives, and other media more than you would in an in-person trial to keep your audience entertained.

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