

California LAWYER

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My First Trial: Lessons I Learned in a Pelican Bay Prison Case

A big firm lawyer recounts life and legal lessons he learned from his first jury trial.

BY MATTHEW D. BENEDETTO

I was 16 years old when, like much of the nation, I became transfixed by the O.J. Simpson criminal trial. I knew then I wanted to be a lawyer.

Fast forward 20 years to a federal courtroom in San Francisco where I represented a prisoner, Jesse Perez, pro bono in a civil rights case against prison guards at the super-max Pelican Bay State Prison for retaliating against him in violation of the First Amendment.

In November 2015, a federal jury found in Perez's favor and awarded him \$20,000 in compensatory damages and \$5,000 in punitive damages. In prisoner litigation, it is a rare and exceptional jury verdict. The verdict is all the more compelling because the First Amendment was on trial.

This was my first trial. Most of my days are spent litigating high-stakes false claims, qui tam, and securities cases, which don't usually end up in a courtroom. Perez's case offered an opportunity to learn not only "legal" lessons but also life lessons. Here are three of them:

PICTURES SPEAK A THOUSAND WORDS

We wanted the jury to see photographs of the Security Housing Unit, or "SHU," at Pelican Bay, where our client lived for a decade. This was solitary confinement. The photographs of those forlorn 8- by 10-foot concrete boxes in the SHU mattered legally: They portrayed what "harm" was being threatened by the defendants. But more importantly, they made this case and solitary confinement real to the jury.

It was vitally important to convey the unyielding sense of desolation at Pelican Bay. After two visits to the prison hidden in the forests on the Oregon border, I knew the ominous sound of the prison doors locking behind me. I knew the feeling—even if fleeting—of being in a place that most people had forgotten—a place that was built to be forgotten. That was the Pelican Bay we wanted the jury to feel as well.

Our opening and closing statements were punctuated with poster board-sized images of the SHU, a place most people might wish they had never seen. Those pictures conveyed far more than I ever could have.

YOU CANNOT PREPARE ENOUGH FOR A TRIAL

We experienced the litigator's boon before trial: a continuance! We used the time effectively. But did that avoid 18-hour days as jury selection approached? Of course not. Any trial, even a three-day one like ours, requires intense preparation and the anticipation of every possible zig and zag.

I was fortunate to be working with a partner and our lead counsel, Randall Lee, who trusted me with significant responsibility, including the summary judgment argument, direct examinations of our client and expert, cross-examination of several defense witnesses, the closing argument, the damages phase and all the evidentiary arguments.

In my direct examination outlines, I wrote out every possible objection, my response, and my follow-up answers. For cross examinations, I wrote out all of the prior deposition testimony we had obtained in the case so it was at my fingertips for potential impeachment. I also wrote out the exact steps to follow to introduce that prior testimony.

For my closing argument, I recounted the Greek myth of Sisyphus, whose eternal punish-

ment was rolling a giant boulder up a hill, only to have it roll back down when he reached the top. It was a metaphor for my client's perseverance and his pain. He faced the defendants at the top of the hill, threatening to keep him at the bottom, "where he belonged," in the SHU. As I delivered the argument, I saw tears in one juror's eyes and I knew I had made my client's story real to them. All the hard work had been worth it.

BE YOURSELF

I learned from the Simpson trial that performance matters but that you have to be yourself. As a trial lawyer, you are seeking to connect with the jury on behalf of your client. Who are you going to be? I am someone who believes in fair play and cordiality, is openly gay and committed to the highest ideals of our legal system. How would the jury view me? Would they like me or believe me? Ultimately, I had faith that in being myself, a jury of my client's peers would understand and accept me, and by extension, my client.

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