

The Power of Day-in-the-Life Documentaries

By Michael Downey

On the television screen is a 50-year old woman attempting to put a clean sheet on her bed. She places the folded sheet on the bed, parks her portable oxygen tank on wheels and then sits on the bed attempting to begin the mundane task of making her bed. A simple, one-minute task for most is a 20-minute ordeal for this woman, who is all the while gasping and struggling for air.

The image of this struggle can be described verbally in three to four minutes and the listener will have some idea of the plight of this woman. This in no way can compare to the impact of the sight and sound of this same scene in a well-edited 30-second audio-visual sequence.

On the screen is a little boy in a motorized wheelchair, who with the help of his mother, is maneuvering across a grass yard. He approaches a playground where other little boys are playing. One of the little boys asks, "What is that?" His mother responds, "This is a new wheelchair." Another asks, "What does he need that for?" and the mother responds, "Because he can't walk like all of you can." The screen shows only the faces of the three little boys and the boy in the wheelchair, who has body spasms throughout this entire discussion.

These scenes from day-in-the-life documentaries have an obvious impact far beyond that of the printed or spoken word. An audience is more persuaded by the portrayals because they have seen with their own eyes and heard with their own ears - or have they? Herein lies the difference between an effective and ineffective day-in-the-life documentary.

Lives are made up of a continuous series of sights and sounds which have meaning and an effect on the person experiencing them. Decisions are made based upon information that is derived from what is seen and heard. This holds equally true

for the jury, seated in a courtroom, lights dimmed, as all of their attention is focused on the television screen in front of them.

Sight and sound are complimentary perceptions - one clarifies, defines and gives more meaning to the other. The viewer can make a more insightful decision when he has the benefit of both. This is not to suggest that one or the other, or both, should be overly emphasized. The overall questions

that should enter the videographer's mind when preparing to shoot such a sequence is, "How can these sights and sounds be best captured to duplicate what is actually seen and heard at this moment in time in this subject's life?"

The intended audience of a day-in-the-life documentary is always the jury. This is not to say that a stolic insurance adjuster or seasoned opposing counsel cannot be moved to action after viewing the video.

If properly produced, the day-in-the-life should make them question whether they want to risk going forward and allow the jury to see the documentary. If the job is done correctly, they will not do so, and plaintiff's counsel has a most powerful settlement motivator in his hands.

Preparation

One of the most important and most often neglected areas in producing a day-in-the-life is pre-production preparation. This includes everything from the first phone call from the attorney's office to the video company, up to and including the day of shooting.

The first phone call should be placed by someone from the firm who has the most knowledge of the case and client, usually the attorney or his/her paralegal, and who can provide the videographer with some insight about the client. Certain details about clients are necessary, such as whether they are easily agitated, whether they compen-

sate well for their disabilities, and whether there are any medical frailties which are not readily apparent.

However, this representative from the firm should refrain from discussing the case in too great detail with the videographer, especially in regards to matters of liability. The videographer, after all, is supposed to be an objective party.

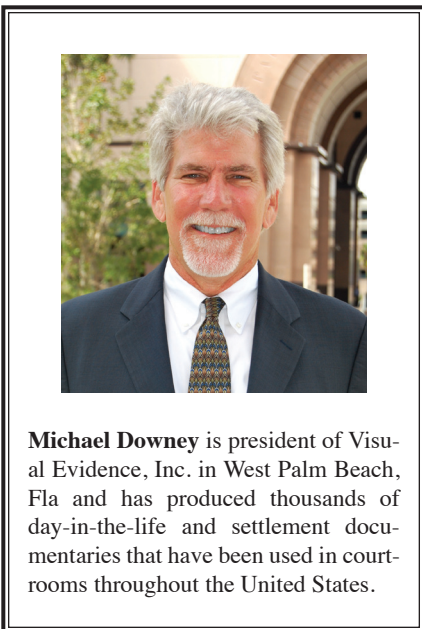
After these details are discussed with the videographer, any deadlines for mediation, discovery, trial, etc. should be clearly communicated. Unnecessary timing errors can adversely affect the quality of the completed piece. Now, the videographer can contact that client directly to introduce himself, discuss what to expect during the filming, and set a schedule for shooting.

This direct contact between the videographer and client sometimes presents a point of conflict. Often, attorneys are horrified by the suggestion that neither they nor anyone from their office attend the videotaping of the day-in-the-life. There are two basic reasons for this. If the videographer is deposed after the production, one question that certainly will be asked is, "Was plaintiff's counsel or anyone from that office present of the day of filming?" If the videographer has to answer yes, the day-in-the-life is automatically tainted in the mind of the jury or may pose admissibility questions for the judge.

Even if the follow-up questioning is unsuccessful in drawing the conclusion that the videographer was "coached" or told that to shoot or not to shoot, other conclusions may already be forming.

Secondly, the videotaping of a day-in-the-life is overwhelmingly invasive to the privacy of the subjects and their families. Each additional person present in the home at the time of the shooting compounds this privacy issue. It is also more difficult to develop a rapport with the subject and help them relax, which is crucial to the completion of a production that accurately depicts a day in their life.

One of the most important characteristics of a successful day-in-the-life videographer is the ability to talk to the subjects in real terms. The subjects must be put at ease about what is going to take place, be able to discuss their daily activities and not experience undue stress anticipating what



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the filming will entail. Ideally, a discussion with the videographer prior to the day of shooting will help to alleviate these fears and potential problems.

A perfect example of a common, sensitive situation which arouses anxiety in these filming subjects is the possibility of nudity. A good videographer will assure them that filming will take place with the utmost discretion and shots will be framed appropriately so that nudity is not evident.

In health-care facility settings, the institution will want assurances that no other patients will be filmed. This is easily accomplished by an experienced day-in-the-life videographer.

Additionally, dealing with healthcare providers in this setting can be difficult. The best way to gain their confidence is to let them know at the outset that it is clearly understood that the care being provided is of primary importance and the videotaping is secondary to that. They should be assured that the videographer will stay out of their way and will not interfere in any therapy, care or procedures taking place. Once they understand this, they will relax and continue to perform their duties uninterrupted. This will create an environment of cooperation which is essential to getting on videotape what is needed, especially in a hospital setting.

The next step to completely this project is the editing process. Again, the experienced day-in-the-life editor should be allowed to use his/her discretion in choosing the scenes and their lengths in order to produce a whole picture that is representative of a day in the client's life. If proper pre-production communication has occurred, the appropriate editing decisions can easily be made.

There are differing opinions in regards to the final length of a completed day-in-the-life. The ideal is determined partly by how much material or activity is to be covered. It is best to limit these to no more than 20 minutes, and ideally should be 10 to 15 minutes in length. This is a general rule to which there are a few exceptions.

In reference to the content of a day-in-the-life, many attorneys may be concerned about showing their client looking "too good" or doing too much. The purpose of a day-in-the-life is to show that the subject's life is really like. This includes the good with the bad - the "can dos" with the "cannots." "Can dos" show the possibility

of recovery if the proper amount of therapy and rehabilitation can be made available. "Cannots" show permanent disabilities. Each of these will have an impact on the overall award the client should receive.

The knowledgeable editor can accurately make these decisions and when deposed can testify that these choices were made independent of outside influence. This again preserves the purity of the completed documentary in the eyes of the jurors and the court.

A properly produced day-in-the-life documentary is by far the most persuasive evidence in a plaintiff attorney's arsenal. Nothing can touch a juror more deeply than the actual sights and sounds of a fellow human being struggling through the activities of daily life.

Whether or not a videographer is qualified to produce a day-in-the-life can be determined by a number of factors. Very important to a successful film is the ability to establish rapport with the subjects quickly and exhibit compassion for their specific conditions in order for them to feel comfortable. The production process should in no way resemble a news crew "first on the scene." Choosing a videographer without considerable experience in this type of production could lose a client.

The videographer should have a working knowledge of appropriate terminology (e.g. g-tubes, hoier lifts, pressure sores, etc.). Also, the production equipment should be of professional level. If nothing else, professional video equipment can help eliminate many distractions (e.g., grainy video and garbled audio versus crisp video and clear audio).

Human perceptions are crisp and clear. The viewers of a day-in-the-life should be given the opportunity to use their senses to the fullest.

There are several considerations when deciding on the appropriate time to have a day-in-the-life documentary of the client completed. There is no more powerful settlement tool than the images and sounds of someone struggling through the tasks of daily life. With this in mind, the documentary should be done early in

the case. If no settlement is reached, then subsequent production updates should be completed every 12 to 18 months with the last or most current production done just before trial. In doing this, the attorney can graphically display the progress or lack thereof the client is making.

With an adequate monetary award, the promise of continued improvement or rehabilitation is evident. Conversely, if the subject is not improving, the updated productions will support the claim that the injuries or disabilities are permanent.

Admissibility

Admissibility rules regarding these documentaries vary from state to state. In some states, opposing counsel must be notified of scheduled filming and allowed to attend. Some state courts have determined that a day-in-the-life can be narrated live at trial by a family member or physician having personal knowledge of the subject of the videotape.

The most commonly applied test of admissibility in regards to a day-in-the-life is whether or not the probative value is outweighed by the prejudicial impact. When properly produced, most of these documentaries are routinely being admitted in most courts across the United States.

There are a number of effective ways to present day-in-the-life documentaries at trial. Some attorneys like to show them early and often, while others prefer to save it for the end.

The increased use of laser disc in the courtroom now offers a whole new approach to presentation of the day-in-the-life video. The tape can be stored on laser disc and the disc programmed with addresses that correspond to certain witnesses' testimony. This gives the attorney the ability to show the documentary in its entirety early in the trial.

By pressing a button on a remote control, portions can be shown which pertain to individual witnesses as they are on the stand during examination. This will further enhance the effectiveness of the documentary.

A properly produced day-in-the-life prepared by a knowledgeable, experienced professional is by far the most persuasive, cost-effective evidence in a plaintiff attorney's arsenal. Nothing can touch a juror more deeply than the actual sights and sounds of a fellow human being struggling through the activities of daily life.