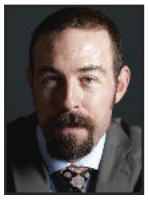


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The map is not the territory

Why it is so very important that you personally go to the accident scene


Cooper

By Miles B. Cooper

A little girl rode her bike along a bike path. The path approached a two-lane vehicle bridge and ran alongside it, like a sidewalk. Her family rode behind her. Her younger brother, new to his two-wheeler, bumped her bike. The bike's front tire went off the curb. She put her foot down in the road. A passing bus crushed her foot. The bus driver had 9 to 12 seconds to see the kids. Our approach: He had the length of the bridge to see, stop, and avoid the possibility that she might come off the curb. The defense: this was an unavoidable dart-out and the parents were responsible for unstable children. The case came to us late. The photos showed a long bridge with a long time for the bus driver to perceive and react. We went out to the bridge. In reality, it was short and wide.

The map is not the territory

Alfred Korzybski, an early 20th-century semantics scientist and philosopher, stated that the map is not the territory. He believed that individuals don't have absolute knowledge of reality. Instead, they have a set of beliefs built up over time about reality. People's beliefs about reality and their awareness (their map) is not reality itself (the terrain). Interesting – but how does that help win cases?

Visit the territory

Visit the scene early in the case. Traffic collision reports, maps, satellite overheads, Google Street View – there are many excuses not to leave our office. But no attempt to capture reality can replace reality itself. Visiting the scene allows you to absorb with all five senses. What does the pavement feel like? Are there sounds, smells, that capture your attention? How did your client feel, lying helpless on the ground? To tell the story, you need to "grok" in fullness, to steal a word from Robert A. Heinlein's Stranger in a Strange Land. It means to completely share the same reality or line of thinking.

In a typical case, we'll visit the scene three times. The first – as soon after the case comes in as we can get there. The ephemeral evidence at the scene can wash away with the next rain. Skid marks, broken glass, fluid dumps. If they are still available, they should be captured by you and your expert. Visiting at the same time can turn up habitual witnesses. I sat on a jury where a pivotal witness was not in the police report. The lawyers found him. He took the same bus every morning and was across the street at a bus stop when they visited the scene at the same early hour of the incident.

The second visit is with the injured person, if it is possible. The return to the scene oftentimes evokes strong emotional responses – ones we need to know to tell the story. I say "if possible" because sometimes the potential harms can outweigh the benefits – you need to decide this case by case. The third is with the experts and the animation team, if one is needed.

The jury has not seen the territory

Three scene visits. That's three times more than the jury. The knowledge is a double-edged sword. Its depth and breadth can skew your view of the case. The jurors do not have that level of detail. When you reflect on the scene, you remember elements absent from the photos. The jurors don't – they've never been there. You need to take that into account. You can bring the jury along. But it requires an understanding that you must spoon-feed the information until they are there with you.

The treachery of images

Back to the esoteric. A variant of Korzybski's concept about maps and territory was illustrated by René Magritte, a Belgian artist, in 1928. He painted a picture of a pipe with the wording underneath "Ceci n'est pas une pipe" (this is not a pipe). The painting is a representation of a pipe, not a pipe itself. We'll call this the Magritte corollary to Korzybski's concept.

The Magritte corollary is important when considering how to convey information to jurors. A doctor describing an occipital nerve block is vaguely interesting. Bringing in a long needle, holding it to the back of someone's head and doing a mock demonstration gets the jury's attention.

The same is true for injury mechanics. We represented an injured plumber. A plug in a concrete hose caused it to whip into his knee. The defense contested causation. Our biomechanical expert brought in a ten-foot exemplar concrete hose, held it vertical near the jury (who leaned back) and in the midst of testimony let it drop one foot down to the floor when he set it down. The bang from the metal coupling startled the jurors, clerk and judge. Causation was no longer an issue.

Bridging

Our bridge case gave us an advantage; there, imagery supported our case better than reality. We were thus able to resolve a

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difficult case. Most situations are the opposite: you need to help the jury understand your reality. Help them by showing them the territory.

Miles B. Cooper is a partner at Rouda Feder Tietjen & McGuinn. *He represents people with catastrophic injury and death claims. In addition to preparing his own cases, he associates in as trial counsel and consults on trial matters. He has served as lead counsel, co-counsel, second seat and schlepper over his career and is a member of the American Board of Trial Advocates. Cooper's focus beyond litigation includes trial presentation technology.*

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