



# A child's eyes

*Identify the issues and refocus your case to highlight the story that a jury will understand*



Cooper

**BY MILES B. COOPER**

“Why is that man sleeping there?” We were hosting my four-year-old niece. She had been wanting a sleepover at her aunt and uncle’s house in the big city for some time. We had her over during Christmas. She lives in the suburbs. Nice place, the suburbs, but the suburbs don’t

have the City’s bustle. Nor do they have the same number of people sleeping on the streets.

Hers was a valid question. I was stumped for a moment. I didn’t even see him. Don’t be too quick to judge me. There’s an urban dweller devolution. I went through the “I-feel-terrible-so-here’s-a-buck” phase. Then questioned whether I was helping or hurting. Plus, deciding whether to give a buck, when you walk past 40+ homeless folks a day on the way to work, is difficult. I ultimately switched into “I-volunteer-instead-of-giving-money” mode. And then tried not to be as affected. The guilt associated with walking past the cold, sodden and hungry every day is otherwise crippling.

## **They don’t always see it your way**

When you see your client, you see a deserving person – injured at the hands of another – who deserves compensation. But that’s your view. What do others see? The defense lawyer, the adjuster, the jurors? Unfortunately, the default is that this is another frivolous lawsuit. Another person pulling the lever for jackpot justice. Protest all you want, the insurance industry’s PR campaign worked. We start a few paces behind our opponents at the starting line, no matter what the jurors tell you.

## **Learn what they see**

If you walk through the City with people who all see (or who all ignore) the same things, you’ll never learn what others see. You probably spend a fair amount of time at the office. When you’re not there, you then socialize with other plaintiffs’ lawyers, and people like yourself. Every one of them sees things your way. Asking them about a case runs the risk of extending your blinders rather than shedding them.

You have a couple choices. Ask yourself, “Can I be a fair witness to my case?” If the answer is “yes,” you are either supremely neutral – put your name in for the judiciary – or supremely deluded. Either way, get a second opinion. How do you get that? There are a few different ways.

## **The world is your focus group**

To get a sense of the other views, talk to folks about your case. And I don’t mean the people you surround yourself with.

I mean the person who cuts your hair. The person in front of you in the 45-minute line at Disneyland or the DMV. The person next to you on your flight. These are easy and effective ways to get a sense of what evidence resonates (or doesn’t.) To do this you must put forth all the information. You don’t want confirmation bias – omitting the bad facts because you want this to be your home run case. Because this can be an issue, a focus group – full boat or stripped down – remains the best way to understand how others see the evidence.

## **Seize the lens and reframe the issue**

You’ve talked to people and learned what facts they see as problematic. The problem fact: they view your client as an alcoholic homeless man who hasn’t had a job since the ’70s. You have the benefit of primacy to tell your story. Embrace the bad fact and give it context.

Primacy. You get to go first. Through jury selection. Through opening statement. And you can seize the lens to focus on the person, the emotion, the story. Get them to care.

“It is June 1967, John Doe is a U.S. Army sergeant in Vietnam. He’s what they call a tunnel rat – a soldier who goes down into tunnels constructed by the Viet Cong to live and hide. He’s deep in a tunnel. He lifts his head up into a chamber. An enemy soldier sees him and throws a grenade. The shrapnel and explosion injure John. The tunnel collapses. John is entombed underground for an hour, believing he will die. He survives. But the shockwave from the grenade damages his brain tissue. And the experience – trapped – makes it so he never again feels safe in an enclosed space. He spends his life outside – a tough life – living with the physical and emotional scars he got serving our country.”

## **The walk home**

“He sleeps there because he doesn’t have a home,” I told my niece. She thought about it for a minute. “Can we get him a home for Christmas?” “I wish it were that easy.” We continued walking hand in hand. She didn’t get him a home. But she did refocus my lens. And a jaded city dweller was refocused on the daily horror that is our failure to take care of our own.

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