

Out of character

Cameo witnesses and their importance in describing the impact of an injury


Cooper

By Miles B. Cooper

The lawyer sat in his client Joe's living room. "How have things been since the incident?" he asked.

"Fine," Joe replied. His hands gripped his amputation stump. The lawyer asked the question a few different ways. "Good, okay, making do, others have it tougher," were Joe's answers. Jurors like folks who don't exaggerate. But they need something to help understand the impact.

Joe's wife interjected: "He is not fine. He fell yesterday trying to help our daughter at the playground. The leg they gave him doesn't work on uneven surfaces."

"Tell me more about that," said the lawyer, turning toward her.

Whine not

A person who talks about pain and limitations, no matter the issue, tends to be perceived as complaining. Jurors recognize that the plaintiff has a vested interest in the verdict. The plaintiff, therefore, is frequently not the best person to elaborate on the impact. Who does one turn to then? Friends, co-workers, family, neighbors. Anyone who can describe before versus after. These are frequently referred to as character or cameo witnesses.

Identifying and interviewing witnesses

Start with the client and the client's significant other, if the client has one. Ask who the client spent time with before, who might be able to offer insight on differences. Be expansive. It is better to get 8-15 names and narrow them down through the interview process. During interviews, one will learn that some are not the best witnesses. Make sure the client lets people know someone will be reaching out – it makes that first phone call easier.

One can tell a great deal about a person in the first five seconds of contact. Trust your instincts. Not everyone is cut out for prime time on the witness stand. Grumpy, curt, monosyllabic? Find someone else. Wildly verbose and difficult to direct? Same.

In that first telephonic interview, probe for stories and demonstratives. "Joe used to be more capable," doesn't provide much. "Joe's my neighbor. He was an all-around craftsman – he offered to help me put in a new patio. Sure, I've got a few photos of him working on the project." People remember stories. But two people telling the same story is boring. Narrow it down to one or two people per environment – work, family, church. Consider using these stories early on. Most cases don't try. Include the cameo witness perspectives in the mediation brief.

Witness preparation

Meet these witnesses in person before trial. Going into the hall to call the great-sounding witness only to find the person has latent Goth tendencies and a piercing fetish can be startling. Nothing wrong with Goths or piercings, but it might not fit the narrative.

Help the witness understand the process during that preparation. Try to remember back to that first court appearance and the nerves – after years of law school – walking in for the first time. Recognize that the confident, articulate witness may seize up with all that (faux) mahogany, the great seal, a raised dais with a seated black-robed elder, and the 12 judging strangers.

Make sure the witness understands the 12 jurors want to make the right decision and need the witness' information to do so. Think of it as explaining what the injured person was like to a small group at a cocktail party. Make eye contact (but don't stare them down).

Moment of truth

That all-star witness with the powerful anecdote takes the stand and suddenly becomes Mel Monosyllabic. Try this: "Mr. Monosyllabic, is this something you do regularly?" Head shake and wide eyes indicate a no. "Are you nervous?"

"Very," the witness croaks.

"Okay. Take a deep breath. We'll get through this and be done shortly." It is surprising how often this helps the witness regain lost footing. It also reminds the jury that the witness is not a professional and humanizes the witness.

Every witness needs a piece of flair. One needs the show with the tell. A photograph, a video, a card, a trophy, a tangible the plaintiff created. If it is something that can be passed around the box, make sure the jurors get the opportunity to touch it.

Keep it short. Ten to 15 minutes is plenty. Don't be afraid to cut it off early on a high note. Listen and observe instead of staying wedded to the outline. Consider closing it with asking for five words to describe the client before the event and five words to describe the client after. These words can be incredibly powerful.

Outro

Back to Joe, our amputee. Joe's wife took the stand. She had a photograph of the playground where Joe fell. It showed uneven bark chips and, in the background, their two young children playing. A story the jurors understood and took back to the jury room when discussing both the Life Care Plan and the damages to Joe as a person.

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