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Memories of My First Time

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They say you never forget your first time. Boy isn't that the truth! I can still remember mine. I was 29 years old and just starting my third year of practicing law. An attorney had left our office and a case he had been working landed on my desk, close to trial. It was a quasi medical case. My new client, Edith Sterling, was a spry 96-year-old English woman, sharp as a tack and tough as nails, who had been living alone in a second floor apartment ever since her husband died 20-plus years earlier. When she started experiencing back pain, her doctor prescribed two months of bed rest at a skilled nursing facility -- Marlinda Imperial Convalescent Hospital in San Gabriel.

Her doctor gave orders that she receive assistance with all activities of daily living, including trips to and from the commode, primarily because the combination of bed rest and muscle relaxing drugs had made her very weak. The day she was to be released home, a CNA dropped Edith while seating her on the commode. Edith bounced off the edge of the seat, landed on the floor and broke her hip. Edith said the CNA was distracted when she turned to talk to another CNA while she was lowering her to the seat. The hospital claimed the CNA had properly placed Edith on the toilet and, pursuant to certain regulations requiring privacy, was standing outside the door waiting for her to finish. The CNA claimed my client fell when she tried to get up on her own rather than wait for help.

Because she had very little money, Edith's 70-plus year old son-in-law was her full-time caregiver. He arrived in the morning to help her dress and prepare her breakfast, returned again at lunch and again at dinner to do the same thing, helped her get ready for bed and did her shopping, laundry and house cleaning. On top of that, he was also caring for his wife who also required physical assistance. Needless to say, it was a dire situation and I was determined to help. I wanted to at least get Edith the financial assistance she needed to hire a real caretaker, alleviate the tremendous strain on her son-in-law and make the last days of her life a little more comfortable. But the hospital had no intention of talking settlement (I was convinced they were simply waiting for her to die) and I was staring at my first trial.

In searching for something to establish liability, I found what I thought was the smoking gun. The incident report, purportedly prepared after the accident, contained two different sentences in explaining what had happened. One simply said Edith fell while being assisted to commode. The next sentence, which looked to be in different penmanship and with a different pen, contained the company's defense line -- that Edith tried to stand up on her own and fell. When I deposed the person who claimed to have written the report, she testified it was all done at the same time and with the same pen. When I inspected the original, it seemed clear to me her testimony was a lie and someone had altered the report after the fact. My first trial, I thought, and I might have a "Perry Mason moment!"

Suddenly, it was the first day of trial. I'm not sure I slept much the night before. I was fortunate to have a great judge, but I was still as nervous as I had ever been. When the judge offered to conduct the *voir dire*, I said yes because I had no idea how I was going to do it. Fortunately, I survived the whole jury selection process and even had one challenge left over.

Then, it was time for my opening statement. I had watched many an opening statement, sitting through numerous trials, but now that it was my turn, well, I was sure I was going to throw up. My pounding heart felt like it was going to jump out of my chest. I was sure everyone could see I was nervous. For some reason, though, the more I talked, the more comfortable I felt. And when I started putting witnesses on the stand, I really got into the cross-examination. I did what I had been taught -- I put my whole liability case on through the defendant's employees. The CNA was horrible and I thought the charge nurse was even worse! By the time I put the author of what I was sure was the forged report on the stand, I was really feeling great. Just as I expected, she testified that the entire report was written at the same time with the same pen. Wow!

The next morning, the court reporter and the clerk asked if the defense had offered to settle the case. What a confidence booster that was! And even though my client struggled a bit on the stand (she was, after all, 96), I was excited at the prospect of winning my first trial.

The closing argument was much easier than the opening statement and I hammered away at the doctored report. I showed the original to every juror and told them to look at it for themselves -- remember that a witness who is false in one part of her testimony is to be distrusted in others! Off to deliberations went the jury. I decided to wait in the cafeteria. Barely one hour later, the clerk told me to come back to the courtroom. A verdict already? No, the jury had a question. "Can we award periodic damages," they asked? No sooner had the Judge given them the answer, then there was another question. "Does Edith have to repay Medicare out of the verdict?" Please, just give her enough so she can get the professional help she needs, I thought.

This time, I decided I should wait in the courtroom. And then I heard a noise I will never forget. That buzz - buzz indicating the jury had reached a verdict. If that doesn't cause your heart to pound and your head to spin, I don't know what does. I tried not to look at the jurors as they filed in -- I didn't want to jinx myself. Then the judge read the special verdict. Again it was something I will never forget. "Was the defendant Marlinda Imperial Convalescent Hospital negligent?" Answer, "No." Signed: Edwin C. Wolfe, foreman.

What!?! I was stunned! Total shock. Unbelievable!! “Oh my God!” the defense attorney muttered. The court reporter was crying, the clerk was crying, three jurors were crying and I couldn’t believe what was happening. Even the judge looked stunned. I didn’t know what to do or what to say. I heard the judge asking whether I wanted to poll the jury. I must have said yes. Polling revealed the vote to be 9 to 3. I still could not believe what had just happened.

Somehow, I managed to get out into the hallway and at least get the names and phone numbers of the three jurors who voted against the defense verdict. But I was in total shock. What did I do wrong? Didn’t they ask questions about damages? How could they have returned a defense verdict? The worst part was knowing I had to go over to Edith’s house and tell her I had lost her case -- there would be no money, her son-in-law would have to keep working. I could not believe this was happening! I made my way to her apartment for another moment I will never forget. There was Edith under her blankets on the couch. I kneeled down and tried to tell her I lost her case, but I couldn’t get the words out. Instead, I started crying. But rather than being upset, Edith just patted my head and in her English accent told me everything would be okay.

For a time, I wondered whether practicing law was what I wanted to do. How could the jury have voted against that poor woman, especially when it seemed so obvious the hospital had doctored their report? Had I screwed up? Maybe I wasn’t supposed to be a trial lawyer. It was as gut-wrenching as any time in my life -- an end to my first trial that I could not have imagined in my worst nightmare. All those late nights, all the preparation, all the stress and anxiety, all of it was brought crashing down with one simple sentence.

Well, of course, I did continue to practice law. And there was some good news. A few days later, after I picked myself up off the deck, I started calling the three favorable jurors. I had no idea what I was looking for, just something to explain what happened. It started slowly. Yes, Mr. Wolfe volunteered to be the foreman; he said he had been a foreman before. Hmm. The first vote was 7 to 5 in my favor, but Mr. Wolfe started trying to influence some of the jurors. Really. He said if they voted against the hospital, the CNA would lose her job and never work in the industry again. Really?! And that supposedly doctored report? Mr. Wolfe said he knew all about record-keeping at hospitals. That was just a paperwork issue. No need to spend time looking at that report. Wait a minute. I don’t remember him saying he knew anything about hospitals.

Then, as if by some divine intervention, a miracle happened. Our investigator’s wife just happened to be associated with a medical center in San Gabriel and had just received her latest newsletter. On the cover was the smiling Vice Chairman of the Board of Trustees of the San Gabriel Valley Medical Center -- one Edwin C. Wolfe, my jury foreman -- with three other doctors pictured at their annual golf outing!

Of course, he never disclosed his position during the judge’s *voir dire*, I was sure. I checked my notes. Nope. He said he was retired, formerly the controller of a manufacturing company. And there were specific questions that asked if he had ever been involved at all with medical facilities. Better yet, because the judge had conducted the *voir dire*, it would be his

notes that would decide the issue. At the motion for new trial, there was no way the judge was going to deny the motion. Of course, the defendant appealed. And -- the bad news -- two days before oral argument at the appellate court, Edith Sterling passed away. I still made my appearance and the court of appeal upheld the new trial. But there never was another trial -- there was nothing left to try.

So there you have it -- my first time. Something I will never forget. And I am sure for all the readers who have tried cases, you probably will never forget your first time either.