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**Action Method Techniques to Prepare Client and  
Find the Story and How to Use These  
to Present to the Jury**

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**ACTION METHOD TECHNIQUES TO PREPARE CLIENT AND FIND THE STORY AND HOW TO USE THESE TO PRESENT TO THE JURY**

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***The stranger who tells our stories when we cannot speak not only awakens our spirits and hearts but also shows our humanity--which others want to forget—and in doing so, becomes family." Mende Proverb, Sierra Leone***

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**II. INTRODUCTION**

**1. *The struggle to describe life before and after an injury***

A client, who suffers the effects of an injury caused by another, while at the same time enduring the litigation process, may feel as he's on an uphill battle against everyone. It may feel impossible to describe pain and emotions being endured. Understanding unusual diagnoses, grasping all the complexities of painful symptoms and trying to explain these to friends and family is an unfamiliar place to be. The suspicious nature of the litigation process adds to the client's vulnerability. Client finds himself constantly explaining and defending how he feels physically and mentally, while still being misunderstood. It is a frustrating and lonely time. It feels better to clam up, hide emotions, at the end, questioning self.

There is a potential that your client's full pain, anguish and impairment is not uncovered and the effect of the losses are unrecognized and unappreciated, even by his trial team.

**2. *Credibility***

Since the client is the most important "exhibit" in the case, client needs to be confident to credibly convey his story. When client does not feel fully understood it hurts

his confidence in telling his story and his credibility suffers. This puts the whole trial team, who is charged with representing him, at a disadvantage.

For the client's accounts to sound truthful it helps to see the context. This happens as he reveals his truth in action form and the team begins to resonate with the various circumstances in his life. He gains confidence in his expressions after he shows his story and others relate. Later, in telling the narrative, it is seamless and exudes credibility.

Credibility of the client, in injury cases where the injury may not always be visual, is even more important than in other cases. Credibility is garnered when we have stepped into the client's shoes and can guide him to describe injury details that pain and anguish caused. To do this, a most effective way is to get the client to show us scenes that lets us step into his life and feel what it was like and is now like, to be there. By putting into action, in the present tense, a range of situations that the client has experienced, we are able to participate and observe them in action.<sup>1</sup>

### 3. *Discovering the stories*

To prepare the client to show us his life before and after the pain and to be able to communicate it effectively we encourage the client early on and often to be a storyteller of his life. Sessions are done with the entire trial team. The preparation is most effective as a group, where the lawyer's participation is essential. There should be sessions before the deposition, thorough discovery and before trial. Different details that may have been forgotten, repressed, glossed over or not thought of as important, will be revealed to the trial group and surprisingly, to the client, as he enters and takes everyone into his drama.

## II. WARM UPS

Warming up, the trial team including the client, is vital to set a tone of trust and openness within the group. It also bonds the team and lets the client practice expressing his thoughts. There are many exercises used to warm up the team depending on the needs of the client and the issues.

### 1. *Warm up to each other*

We begin preparing the client to open up, with warming up the client and the trial team to share the feelings in the room and maybe each one revealing something about them selves. This or other opening warm ups show the client that his lawyer and the rest of the team are in this process together and they can begin to let their guard down.

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<sup>1</sup> GERRY SPENCE, WIN YOUR CASE: HOW TO PRESENT, PERSUADE, AND PREVAIL—EVERY PLACE, EVERY TIME (St. Martin's Griffin 2006).

The client sees that he is not the only one that experiences feelings of nervousness, anxiety, embarrassment or other uncomfortable feelings brought up by having to talk about self, in public.

In the process we also learn how the client communicates. Whether he minimizes his pain and emotions or maybe talks too much or too fast or uses an incongruent laugh as a defense mechanism, when talking about his impairments. It's important to be mindful of these observations for further work.

2. *Warm up to talk about the pain*

a. *Describe the pain*

Pain descriptions of “excruciating”, “painful”, “hurts” sound vague, ambiguous and conclusive and don't capture the accuracy of what's happening to the client. Jurors want descriptions and they will figure out and trust the adjectives they themselves assign to the images being described. It is important to go beyond those words to make sure the listeners and observers truly understand.

A warm up activity is used to free up the client to illustrate how his body feels. We ask those in the room to describe different pains they have had, compare them to something else (an analogy) and tell us how the pain makes them feel when it occurs. The client is asked to pick the different pains he experiences resulting from this injury. These can be physical or mental pains. It is very interesting to see the varied ways people in the room will describe the pain in the same injured part of the body: constant thumping, burning, like a bolt of electricity, like a vice gripping my arm and twisting it, like people pinching my arm from the inside out, etc. The descriptions are credible. In the group members' faces and mannerisms and in their efforts to describe, we see credibility. Again, the client *and the lawyer* begin to understand that this is not an easy task, yet so valuable in letting others imagine what the pain is like.

b. *Concretize the pain*

Sometimes people are asked to find something in the room to represent the pain. It helps concretize and visualize the concept. “I pick that blue marker which reminds me of the sharp feeling I get that runs inside of my leg bone and feels like I'm being injected with frozen liquid” or: “I pick the closed blinds that represent my feelings of being trapped in this pain”. This is a useful tool for those who have a difficult time expressing themselves. The pain then becomes alive and vibrant and real.

c. *Emotional feelings associated with the pain*

To aid the client to get out of their heads and into their hearts, the group then focuses on the emotions the pain brings: feeling old, helpless, weak, angry, sad, impotent, helpless and other feelings that uncover and validate the effects of the pain.

This is a vulnerable place to reach. The client has probably never been asked the question of how the pain makes him feel inside and has bottled up the emotions. Once becoming aware of them, they are easier to access and articulate them to others.

3. *Warm up to find a safe place to testify*

In continuing the warm up, we can take each member in the group to remember a place where they have felt safe. This warm up helps bring them to a moment of empowerment, confidence, pride, strength, calmness, vulnerability or similar feelings needed when delivering testimony at a deposition or trial.

Just going through the warm up process, begins to help the client describe what he's going through and helps the trial team discover nuggets of the narrative to use in direct examination of the client. Themes of the case, specific to the client's case emerge, and the opening and closing statements begin to be developed.

### III. REENACTMENTS- SHOWING THE SCENES IN ACTION

1. *The Backstory*

**If the jury can see the life before, they can feel the loss.** The client's backstory is discovered through looking at scenes of his life before the injury happened. Jury members need to be shown the life lived so that on their own, they can decipher the damages. It makes the narrative so much more powerful.

a. *List activities that formed his life*

We take the client through listing different activities and hobbies that occupied his life before the injury, from his job, to hunting, fishing, pitching for a weekend softball team, being a part of a Zumba class, traveling or other interests. It could have been taking care of his parents or volunteering at church or with the youth in the community. This gives us an indication of his physical and mental requirements at the time.

b. *Reenacting scenes*

The preparation of the client continues with reenacting scenes from before his injury. It is very important that the client is able to step back to a time before his life was compromised, to again experience sounds and smells and textures and people around him. Client immerses himself and us in the activities and hobbies that encompassed his life; the different parts that made life "busy", or "active" or "fun" or even "in transition". If the details of those days have been minimized in his mind because of the recent changes of his "new normal", these details will become vibrant once more.

c. *Deconstructing activities*

In deconstruction each activity required of the client, he relives the motions needed to carry them out. This shows the different facets of each action and their physicality. It portrays in detail a picture of what he used to do. It's impacting to client to come to the realizations of what it took to execute even some of the most basic movements.

Usually, the trial team and the jury come in with assumptions of the requirements of certain jobs, which may be very different than the job the client was actually performing. Jobs may be called by the same name, yet may have totally different expectations. A Facility Supervisor at one company may have to deal only with administrative tasks while at another company the same position calls for doing most of the labor and maintenance.

Doing the action reminds the client of his abilities at that time. The sitting for long periods of time, the having to work outside in the elements; extreme cold, heat, rain, which would not have given him trouble before but now may be unbearable. The bending, stooping, having to wear a type of shoe to work, all these things may be overshadowed by the more pressing limitations to his life. Sometimes the anguish comes in not having the choice to do simple things.

*d. Mental anguish*

In the process we discern what these activities meant or brought to the client. We can reverse roles with the different sections of his life so the client is speaking as that part, i.e., the job. A job that means only an income to one person, to another, it could bring self-esteem, camaraderie, achievement and the word income may not even come up. Important piece for us to witness, to realize the true losses a client endures. It is not the loss of a job, but the loss of the achievement it brought to his life, the friendships, the pride. The jury can connect with these damages to a person's life and the anguish felt when changes happen to those sections of a life.

*d. Life Lessons That Form Character*

Jurors want to sense the witness' character to help assess his credibility. In the scene setting we can delve into life lessons learned from influential people in the client's past who helped form his life journey and his character. From there, surface the principles and values that are innately important to the client and which he will not betray, if it is within his power.

He might bring up dad who showed him by his example of working two or three jobs at a time, that one must sacrifice for the good of one's family. We begin to see that if this client could work, he would. It is against his inherent beliefs not to work or against his nature, to sacrifice his family's well being for his pain. His standard is his father. The sense in the room is that he wouldn't stop working unless the pain fully prevents him from going to work. Credibility is gained when we see this type of character.

By bringing up life lessons, client reminds himself how important his values are to him and why, and is newly empowered and convicted about the abilities he possessed and with what vigor he performed them. He also recognizes why his anguish is so strong.

e. Other Witnesses

It is imperative that we bring to trial other witnesses to speak for the client, the limitations and harms they've seen. Witnesses lend strength to the client's case.

One added value of recreating scenes are the peripheral witnesses that neither ourselves nor the clients would have thought were important but give an insight into the client's character, values and losses. The older neighbor down the street whose lawn client volunteered to cut every week, the receptionist at the client's job who can talk about the client stepping in, to coach her child's team when she became ill. The high school coach, who inspired and followed the client throughout the years and can still testify to his strength of character. The witnesses to the incident, who the client did not remember were in the scene, until the client recreated the moment.

When we revisit the scenes, the home, the job, the high school he attended, the nursing home in which he volunteered, they bring up unexpected characters that can best stand and testify for who the client used to be and who he has become.

2. *The Incident*

By going back to the scene of the incident and taking us there, with sounds and smells and sights and witnesses who were present, where they were and how it all happened we can begin feeling some of the emotions and pain felt by the client at the scene of the incident. This is usually the beginning of the pain and the anguish. He may begin to understand the mechanisms of his injury and help him make the pain felt then, more vivid.

At the same time, it will be easier for the lawyer to set the scene for the client to offer this important piece of testimony.

3. *Effects of the injury*

After reviewing life before and the incident itself, the client is palpably feeling the effects of the injury in his world of today. It is now easier for him to face and explore the limitations, losses, adjustments and changes that have befallen his life. These losses are now felt with emotion. He communicates them in a distinctive manner.

As he's viewed each component of his life, it is easier for him to go through these same sections as he testifies and find examples of the impact of the injury on his life. There is now a more complete vision of the damaging consequences on his person and on all those around him.

Jurors will relate to the meaning behind the changes. Not being able to help around the house that makes client feel like he's a burden to the family; not able to carry his grandchild and play with her, which brings utter sadness and shame; not having the family over on Sundays that brings loneliness, isolation and rejection. These are clear damages to the enjoyment of life, which will be important for the jurors to hear to understand their significance.

The client has stepped into feeling the losses, not just talking about the losses, as he has recreated pictures of his life as they drastically changed. Before, he may not have fully felt the enormity of these damages.

### III. RESONATING WITH CLIENT

At the conclusion of the work with the client, the group shares with him how the stories they saw resonated in their own lives. Client knows now that he is not alone and feels a certain healing in his soul to have been heard and understood.

### IV. CONCLUSION

Preparing a client to open up and share his pain and anguish is hard work. It takes a lot more from those advocating his case than just asking questions that may not hit the mark of what really is going on with him, yet the benefits to the client and the case are extremely rewarding.

In preparing a client to open up, we awaken his spirit and heart so that he can connect with and show us and the jury, his humanity. If we can do this as his lawyers, we've done a good thing. We've done what client has hired us to do.... be his voice and help him have a voice.