

How to Build a Mediation Presentation That Will Make an Insurance Adjuster's Sphincter Tighten

I arrived to help my client prepare for his upcoming mediation. The first thing he did was show me all the wonderful family photos he had of his client and her husband, the decedent.

"My guy was the perfect plaintiff," the attorney began. "Spent tons of time with his kids. He was the one who took them to school most every morning, he coached all their teams. An elder in his church. Loved by his neighbors. A consummate professional. His wife is a great witness. And this," he said pointing to the autopsy photos, "is what happened to him. We're going to ring the bell on this one."

I viewed the photos silently, but all I was thinking was, "So what?"

So what?

Consider Your Audience

Yes, so what? These photos, the stories, the personification of the deceased all have their place in a trial. In a mediation, it's slightly different. We're not playing to jurors. We're playing to the person who holds the purse strings. The insurance adjuster. Does an insurance adjuster care that your young client was Phi Beta Kappa? Not likely. Is an insurance adjuster emotionally affected because your client's legs were burned off him while he sat half in and half out of the SUV that had just rolled over on him? Doubtful.

Insurance adjusters have seen the worst of the worst. They see horrific injuries every day. They see "perfect" plaintiffs every day. It doesn't move them. What do insurance adjusters care about?

Insurance adjusters care about one thing more than anything in the world, even more than money.

Risk.

When an insurance adjuster is listening to and watching a mediation presentation by a plaintiff, she is asking herself, "What is my downside here? What is my risk level?" And she is constantly weighing the risks of going to trial versus the costs of settling with money that the insurance company would prefer to hold on to for a little longer.

Your Objective: Communicate the Risk

When you start putting together your mediation presentation, instead of asking, “What’s great about my case?” ask yourself, “If I were the adjuster, what about this case would freak me out?”

The Elements of the Sphincter-Tightening Presentation

Their Witnesses and Documents

The first answer is bad defense witnesses. Since lawyers in general—and busy defense firms in particular—tend to do a terrible job of prepping witnesses before deposition, it is *imperative* that you videotape all key defense witnesses: company witnesses, doctors and even experts. If you are in the habit of videotaping everything, good for you. If not, now is a good time to get in that habit.

As much as possible, tell the story using defense witnesses. Pull out the parts of depositions that show blazing incompetence, indifference or best yet, bad motive. As much as possible, include documents generated by the defense to bolster your case.

Adjusters don’t typically see witness testimony before trial. If they’ve got some awful witnesses, make the adjuster painfully aware of it. Start and end with their horrible witnesses.

The Timeline

Sure, a timeline is always helpful for audience comprehension. But in the mediation presentation, you want to use the timeline to highlight points in the process at which the defendants *could have made different choices that would have spared the plaintiff his fate*. Did they hire against policy? Fail to train? Decide not to inform the customer base of a potentially fatal flaw in the safety product? Put it in the timeline.

What About My Plaintiff?

Of course your plaintiff needs to be included in the presentation. Doing so serves two purposes: 1) it shows the other side that either your client is a gem (or perhaps that in this venue it won’t matter if he isn’t); and 2) it’s good client relations. But the plaintiff should be a coda, just a quick notice to the defense that they won’t be able to score big on “your guy.”

The big dollars don't lie in the beauty of your plaintiff's life and the tragedy of his loss. The big dollars lie in the adjuster's uneasiness about the risk. And if you can get the adjuster's sphincter to tighten, her hands may well loosen.