INSIDE THE MINDS

Representing Plaintiffs in Personal Injury Cases

Leading Lawyers on Managing Discovery, Preparing Witnesses, and Presenting the Plaintiff's Case

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Knowing Your Client and Your Case: The Foundation of a Successful Case Strategy for Personal Injury Lawyers

Chris Faiella

Managing Member

Tatlow, Gump, Faiella & Wheelan LLC

ASPATORE

Understanding the Plaintiff's Injury and How It Affects Their Lives

In order to develop a client strategy when representing a plaintiff in a personal injury case, it is important to consider the type of case it is and the type of client you are dealing with. Basically, you need to create a strategy that deals with the specific type of liability that is involved. In other words, you need to focus on what the defendant did wrong and how it affected the plaintiff's life in order to determine the damages that may be involved—i.e., the medical bills that may result from a car crash case.

Probably the best way to determine an effective strategy in these cases is to get to know your client very well. This starts during the initial interview where you gather the necessary information in relation to the case, although I also try to spend some extra time with the client. I have included a standard case intake sheet that outlines the basic information you want to collect in a typical auto case.

It is a good idea to have several in-person meetings prior to any depositions, and this is easier to do if a client will allow me to meet with them in their home—particularly if they have serious injuries that makes it difficult for them to conduct the day-to-day activities they were able to do before the accident. For example, if the client has a mobility issue because of an accident, you cannot learn what it is really like for them to transfer from a wheelchair to the bed or to take a shower by simply reading a book. You need to experience what the client is going through by visiting their home and seeing their circumstances and surroundings for yourself, and then you need to talk to the client about how they live in that environment. You need to get in touch with how life really is for the client, and what their actual struggles consist of. When you truly understand, you have taken the first step toward being able to advocate. Without understanding, advocacy is generic, passionless, and lacks humanity. We should never lose sight of the fact that jury justice is a personal and human process.

Consequently, my primary strategy in personal injury cases is to personalize the plaintiff for the jury by learning all that I can about their particular circumstances—how they live, eat, get dressed, and entertain themselves. In addition, you need to know how their injury affects what they did before—in other words, what were their hobbies and extracurricular activities prior to the accident, and how has their injury limited their participation in those activities.

Damages Considerations: Personalizing the Plaintiff for the Jury

I always try to figure out how the jury will connect with the plaintiff, because likeability is a huge factor in determining damages. Therefore, in addition to getting to know the plaintiff, I always try to get to know the lay witnesses who will help present my client's case. I will ask the client early on for a list of people who would be willing to speak to us, and that list may include siblings, friends, business associates, and members of the client's church, social clubs, or other activities. Basically, we will call in those witnesses for what we call a "cheerleading meeting" in order to go over the case and how it has affected the client. For instance, a witness may say, "Bob used to be a great bowler, but now he cannot do that." Such details may seem minor, but that kind of testimony can help you to put together a case. Basically, the overall strategy in a personal injury case involves personalizing the client's injury in a real-world setting, because ultimately you will be presenting a jury with the facts in the case, and those jurors are just regular people who are trying to make sense of what happened to the client.

Also, with respect to awarding damages, the jury wants to know that the money is going to a good person. It is important that the jury understands that the money/damages in a personal injury case is not some esoteric amount—it is connected to the loss the plaintiff has suffered. The jury needs to realize that the damages that they award are going to make a difference in the plaintiff's life, and again, that is done through personalizing the client's injury, explaining it, and supporting the details with lay witness testimony from members of the community. It is important for the jury to understand the extent of the client's injuries, and that they have bills that need to be paid. Simply stated, the money that the jury awards to the plaintiff will either help the client live the same kind of life they did in the past, or achieve things they could not otherwise achieve because of the injury.

It should be noted that a result of the recent economic downturn, there seems to be more sympathy and understanding among jurors regarding a personal injury plaintiff's economic circumstances. For instance, if the client has been injured and then lost their job because of that injury, it is now more difficult for defense lawyers to allege that the plaintiff will be able to get a job again in the near future. Conversely, jurors are also more skeptical that future employment, even of good employees, is a certainty.

Liability Issues

With respect to the liability issues in a personal injury case, you have to look for a way to communicate what the defendant did wrong in a way that is meaningful to the jury. In other words, your explanation of the liability issues in the case has to be fairly simple and straightforward, and it has to involve behavior that the jurors will find unacceptable. For instance, a case where the defendant ran a red light is a fairly clear liability case. Consequently, you would not have to build a master strategy to try that case, but at the same time, you do need to emphasize that the defendant did something that we all fear—i.e., we all expect other drivers to stop at a red light, and if a driver does not do so, that action puts you and/or your family at risk.

Simply put, you want to present your case in a way that shows the defendant was a rule breaker and that their conduct is unacceptable, and you need to emphasize to the jury that we want to deter people from doing such things. Even in more complex cases, you want to be focused on the idea that there were some basic rules and premises that were violated, and those basic rules and premises are not just about the plaintiff—they are about the safety of the entire community. A jury is the conscience of the community—in fact, they are the community, and if they feel certain conduct is unacceptable and it threatens them, that is a motivating factor in terms of them being able to give an award to the plaintiff in a particular case.

Connecting with the Client

I believe that the most important aspect of trying a personal injury case is trying to connect with your client. Unfortunately, as in any other profession, you can get a little bit jaded. For instance, intersection collision cases are very common. However, that does not mean that you should not learn all that you can about such a case. In fact, you need to go beyond looking at the accident report—you should go to the scene of the accident, as every accident scene is different, and you may see and learn things you would not have from the report. For example, in a recent intersection case, we visited the scene and noticed a school across the street. On closer inspection, we noticed that the school had a security camera. We eventually obtained the tape from the school and the camera had recorded the whole collision, which showed the defendant negligence clearly. This was extremely helpful as the eye-witness accounts were contradictory. There was no mention of a school in the report, and this evidence never would have been found if we had not gone to the scene ourselves, even thought this was just a simple intersection case.

Again, going back to the strategy of personalizing your client's case, you want to be certain that you are going the extra mile to learn about their case and what happened to them. That is why I think it is important for you to be more than just a lawyer in this practice area—you need to be a counselor as well. When people come to a personal injury lawyer, they are often very afraid, because they have been through an emotional experience. They are in a vulnerable place, and they want their lawyer to be someone who can provide them with help. Although they are typically looking for the court system to give them money, they are also looking for some assurance through a difficult process—and ultimately, it is your connection with the client and your ability to provide that assistance and understanding from the outset that allows them to trust you and helps you to personalize their case. If your case strategy is based on the fact that John Doe was involved in an intersection collision and has X medical bills, then you are not really doing your job. Rather, you need to get to know the client and their personal circumstances, and again, that is best done by going to the scene of the accident, and going to the client's home and trying to get to know them as a person.

Key Components of Personal Injury Cases

Personal injury cases cover a huge gamut of injuries. For example, we handle truck accident cases, electrical injuries, insurance bad faith, boating injuries, and product liability cases. However, a component that is typical to all of these cases is liability and damages—in other words, what did the defendant do that was wrong and what damages were involved?

Causation may also be a key issue, particularly in cases that are a bit more complex—in other words, did the bad conduct or the bad product cause the injury suffered by the plaintiff. This cause and effect must be translated into something clear and believable for the jury. The lawyer will therefore need to learn the mechanism of the injury, and the medicine involved in the injury, where causation is truly a contested issue.

Another important component of personal injury cases is the financial circumstances of the defendant. Simply put, can the defendant pay the damages in the case? The asset typically searched for is insurance but a defendant's corporate or personal assets may also be able to satisfy a judgment. In the absence of insurance an assets check should be performed.

Again, it is important to personalize the individual case. It is also very helpful to conduct a focus group, not only with respect to the liability issues in the case, but also regarding the group members' thoughts about the plaintiff, cause, and damages. Focus groups give feedback from people who are not closely involved with the plaintiff or their case, so that the lawyer can get a more objective view of the strengths and weaknesses of the case.

Gathering Information to Build the Plaintiff's Case

When gathering information to build the plaintiff's case we first conduct an initial screening by a paralegal, which is fairly cursory but gives us some basic information such as the type of problem they are seeking help with, and some contact information. We then schedule a detailed interview, which is usually conducted at our office, but can also take place in the client's home. After that information is gathered, we order additional information such as accident reports, medical records, employment and tax records. We speak to any witness we can find, and visit the location of the event if possible.

We collect and synthesize this information into what I would call the initial story about the client. Once we have completed that process, we try to get to know the client better. We start gathering information about their network of friends and co-workers, and then conduct interviews with those individuals, as previously noted.

In terms of building your case, you need to obtain some fairly basic information—i.e., the client's name and marital status; their business relationships; and the incident that they are consulting you about. Again, using a car accident as an example, you would want to know the condition of the other driver before the accident. For instance, were they tired because they had been driving a long time, and where were they coming from? What was the purpose of the trip? What were the roadway, traffic, and weather conditions like? It is always important to gather specific information about the accident scene. Also, if appropriate, we would hire experts to gather information, such as an accident reconstructionist, or a traffic or roadway engineer.

Most importantly, you need to document and preserve evidence. In other words, you should preserve any evidence that may not be there down the road. For instance, in a car crash scenario you may want to obtain the vehicles that were involved, or at least have them photographed, depending on the nature and extent of the case. In a large and very serious injury case, you may want to secure the vehicles in the event of a possible product liability case. In addition, you are definitely going to want to look at any evidence on the roadway as soon as possible, as much of that evidence will be destroyed by weather, deterioration, or simply from cleaning of the roadway.

It is also essential to identify any witnesses. At our firm, we have been very aggressive in trying to find witnesses, because it has been our experience that the police do not identify all of the witnesses at the scene. There are only three spaces for people to be listed as witnesses on a uniform accident report in our state. However, there may actually be ten to twenty people who witnessed the accident. Therefore, it is important to hit the pavement early on to talk to witnesses that have been identified by the client or the police, or you can hire an investigator to identify additional witnesses.

Other information that you can obtain at the accident scene often relates to sight angles and distances. If you are handling a case that involves a drowning, you will not be looking for skid marks as you would in a car crash case, but if a boat was involved, you should check to see if there was a life preserver on board, and the physical conditions at the site where the accident happened. In an auto accident, you need to know the speed limit, and whether there was a stop sign or red light. You need to understand the traffic pattern, and what would typically be expected of people in that driving situation so that you can understand where the deviation was on the defendant's part, if any.

Obtaining Information about the Plaintiff's Injuries

Obviously, it is important to collect any information from the plaintiff about their injuries, including their personal testimony regarding any tests/MRIs that were conducted, and all the facilities where they were treated. You also need to know about the expenses they have incurred from their medical treatments, including any additional expenses such as mileage and parking. In fact, we give our personal injury clients a diary so that they can start writing down what their experiences have been, and that helps us to know what they are going through.

We also want to know about any previous claims and other lawsuits the client has been involved in, as well as any pre-existing injuries, as that information may change your strategy with respect to how you present the case. Every personal injury case has unique facts; therefore, you can have an overarching strategy, but the specific case strategy must be tailored to the client's case. For example, if you are representing someone who now has a badly injured back but had a perfect back before the accident, you would handle their case differently than you would if you were representing someone who had a previous back injury. In the latter case, you would need to distinguish the second injury from the first, and determine if it aggravated the previous injury. You also need to make the jury understand why that preexisting injury does not negate or prevent the ability of the plaintiff to recover damages for that new injury or the aggravation of their old condition.

Again, it is important to learn about the activities that the client was able to do before, such as golf, tennis, or fishing. In other words, you need to know what activities were important to the client's life and gave them joy, and if those activities have been affected by the accident. Of course, you want to let the jury know what your client can and cannot do because of their injury, but you also want to focus on what the plaintiff is doing now, and how they are trying to be positive about their remaining physical functions. To that end, even if the client has been badly injured, we almost always try to get them to go back to work if that is at all possible—largely because we know that juries expect people to do the best they can with the circumstances they are in. For example, the client may have a bad back injury and can no longer go back to their job as a factory worker. However, they may be able to ride a lawn mower for a local school's sporting field. A jury will respond to such evidence much more positively than if the plaintiff simply says, "I stay home all day." It is much better if the plaintiff is able to say, "I cannot do a lot of work with my injuries, but I volunteer a few hours of my time to help the kids in my community." In fact, most injured clients have residual capacities, and if they do not use them in some way, they will not be looked upon favorably by a jury. Therefore, we always want to know what the client can and cannot do, and we try to encourage them to do the best they can to continue to live their lives.

Much of the information concerning the client's condition will come directly from the client, while some of it has to be garnered by going to the location of the accident; meeting the witnesses and other people who know the plaintiff; meeting with the doctors and nurses who have treated your client; and ordering medical records and bills from hospitals, so that you will be fully familiar with all aspects of the plaintiff's life.

Timeline for Building the Plaintiff's Case

The timeline for building a personal injury case varies. I practice in Missouri, and I typically tell my clients that the timeline from the intake to the end of their case, if it goes to trial, will be approximately two years. Depending upon the level of the client's injury we try to gather all of the information for our case within six months.

If we are handling a fairly serious case, we will have someone at the scene within twenty-four hours. For example, in a truck accident case that resulted in a serious injury or death, we are generally hired to represent the plaintiff within the first two weeks following the accident. At that point, there is still a good chance that some physical evidence may still exist; therefore, we will get our experts out to the scene as soon as possible, because that evidence may not be there later on. We would not typically do that in a simple car crash case resulting in a soft tissue injury, but such actions are necessary in a more serious case. Also, in a very complex case involving a defective product, or a complex negligence case, it could take much longer to gather all the necessary facts.

Mistakes to Avoid

One of the biggest mistakes that a lawyer could make in this practice area would be to not gather all of the information I have discussed, and not getting to know your client. Another common mistake that lawyers make—in fact, it is a mistake that I have sometimes made—is becoming so connected with your own case and its strengths that you think you can overcome all of the weaknesses—and the longer you have been handling the case, the harder it is to see the weaknesses it may contain. In order to avoid this error, one thing that you can do early on is to make a bullet list for yourself of the three strongest facts, arguments, or legal points in your client's favor, and then make a similar list of the weaknesses in their cases. It is possible to do this at the outset of the case, because in most instances the client will provide you with enough facts to figure out what the defense is going to say.

At the same time, you need to constantly remind yourself that smart, talented, aggressive people on the other side are going to be doing many of the same things that you are going to be doing. Consequently, you should never underestimate the defense, and make sure that you prepare thoroughly for each of the points that they are going to make. No amount of hard work and preparation will win the unwinnable case, but with good case selection, hard work, and preparation you can win your clients' cases.

Using Experts to Present the Plaintiff's Case

Experts are best used when their testimony is necessary; in fact, I feel that lawyers often use experts too frequently in these cases. Rather, the most powerful witnesses in a personal injury case tend to be lay witnesses who experienced the event or can speak to damages. Expert witnesses tend to be most effective when they are explaining the industry that they are in, the rules for that industry, why the rules have evolved, and why violating them is a bad thing.

For instance, let us say that you are dealing with a case where your client was electrocuted because the person that installed a particular device did not ground it properly. If an expert simply says, "That device should have been grounded and what the installer did was wrong," that is not really effective testimony. It would be far more effective if the expert were to comment on how electricity works and why it is dangerous, why industry associations and safety rules have been created, and why certain standards exist (e.g. they are designed to protect people's lives). An expert who testifies in such a case should give examples of the bad things that happen if safety rules are not adhered to, and then explain how everyone who works on these systems should know these basic rules. They should then go on to explain the extent of the defendant's knowledge in that area, and tell the jury what the defendant should have done—and why what they did is not just unacceptable in relation to their profession, but also unacceptable to society.

Again, although some cases do require a number of experts, I believe that experts are most effective when they are used sparingly. Cases that have many experts tend to be more complex and difficult than those cases with just a few experts or one expert. You also have to be careful about how you choose your experts. Some services advertise experts for trial testimony, but most of the best experts I have used were found by contacting other lawyers who have had similar cases, or by reading the literature in a particular area to try to find out which experts are dealing with the specific issue in my client's case. For instance, I had a case that dealt with the degradation of a certain type of metal in a certain type of product, and the way I found the expert in that case was by reading a number of materials about metallurgy and talking to some college professors. Ultimately, I found a world-class expert who did not testify extensively, but was an excellent teacher with respect to this subject area.

Also, when choosing a witness to testify in relation to liability issues, you do not want someone who can be charged with being a professional witness, or someone who is "sort of" an expert in the area. You want your experts to do something other than testify professionally, and to be top flight people in their field who can communicate well.

In terms of selecting experts to testify in relation to damages, I prefer using physicians who are actually treating my client and have a personal connection with them. Such a witness has had multiple opportunities to observe the patient, and if they can testify that the patient is trying to get well by following the doctor's instructions, taking their medicine, and doing their therapy, that doctor will make a very convincing courtroom witness and will add a lot of value to the case—as opposed to an expert doctor who is hired for the trial and does not have that personal relationship with the client; rather, they are only giving their opinion in relation to the client's medical records.

Preparing Witnesses to Testify in a Personal Injury Case

When preparing lay witnesses to testify before trial, I will have a group meeting with all of those individuals as part of our trial prep process. Several lawyers and staff members will be present in addition to the lawyer who is actually trying the case. We will then use a whiteboard or a large piece of paper on which we will write down the elements of the damages in the case—not in a legal/jury instruction way, but in a common sense way. In other words, we will note if the client has a bad back, bad knee, or an inability to walk as a result of the accident—whatever the major problem may be—and then we will start listing things that the witnesses have noticed about the client that would indicate how they know he or she is in pain. We often obtain some highly effective statements by using this strategy—i.e., "I can see the pain on her face," or "I know he is in pain because he would always carry his son back to the car with him after a soccer game, and now he doesn't." That type of witness testimony is much more effective than simply telling the jury, "My client has pain because of their injury."

During this group meeting we try to get our lay witnesses to reaffirm what they told us in an initial interview, and encourage them to communicate in simple stories the pain and disability that they have observed in relation to the client, as well as any emotional changes.

We try to get everyone to contribute in the group meeting, but not everybody does; therefore, we often use the testimony of the more articulate witnesses to prompt testimony from the other witnesses. After our group meeting we will break into individual sessions with our lay witnesses, in order to prep them for the questions they will be answering at trial. Generally, we create an outline based on some of the stories we have been told, and then we will go through the outline with the witness. Typically, we will explain how trial testimony works, and go through any concerns or fears the witness may have about testifying. We also practice the questions we ask at trial. For example, I may ask the witness, "How do you know Bob is in pain?" and he may say, "He was able to coach his son's sports team before, and now he doesn't," or "When he is trying to watch the game he is moving all around and trying to get comfortable." That is what I call a nice little vignette—a little story that is very honestly told in layman's terms. The best witnesses and the best stories are the ones that we will use at trial.

Overcoming General Defense Arguments in Personal Injury Cases

The defense arguments that seem to come up most frequently in personal injury cases are damages defenses—i.e., that the plaintiff had a preexisting injury, that the plaintiff is malingering, or that they are motivated by money or greed, or exaggerating their symptoms. In some cases, the defense will argue that the plaintiff was not injured at all, and their symptoms are related to an earlier injury. In some cases, the defendant may accept their liability and still dispute damages, or they may also dispute their liability—i.e., "I didn't run the red light." However, most commonly the defense will be looking for a way to say that the plaintiff is not really injured, or is not as badly injured as they claim to be.

In order to counter the liability defense arguments in a complex personal injury case, you may need to figure out what the standards and rules are in the industry you are dealing with. Naturally, whenever you are suing a corporation in a specific industry you should try to learn all that you can about the corporation and how they do business, and the utility of the product or service they are providing, including why it is important; why people buy it; what people expect from it; how they use it; how it is made, and how it is delivered. Simply put, if you are going to critique someone for not doing what they are supposed to do, you need to understand what they do and how they do it. Therefore, you need to research the defendant's industry.

For example, our firm handles a lot of bad faith litigation against insurance companies, and in those cases, we do not simply study the case law. We have also done an extensive amount of research into how insurance companies are structured, how they make their money, and how they train their claims handlers—i.e., the people who are commonly criticized in these cases—and what laws and industry standards apply to them. We also want to know what associations or groups the company belongs to; if there are any specific values that they tout; and what they say in their advertising. Researching that last point can be particularly effective, because if someone is saying one thing in their advertising but a different thing in the courtroom that can make a big impact on the jury. Therefore, you need to learn about your opponent's business life, dealings, and conduct so that you can truly understand everything about them.

Overcoming defense on the injury requires understanding the client's condition and physical and mental past. For example if you represent a female over forty years of age who has suffered a mild traumatic brain injury in a car crash, expect the defense to be looking for and exploit medical conditions common to females over forty years of age that can occur with or without a head injury. A common example would be depression and headaches. Whether the client does or does not have a preexisting history the defense can use these issues to undermine damages. To combat this, you must anticipate these defenses and counter them with facts. Facts can come from the client who can describe how the injury was not pre-existing or was different from what she experiences now. Facts can come from the different effects the symptoms impose on her life, through her testimony and from family, friends, and co-workers. Facts can come from treating physicians and literature, to rebut the defendant's medical experts.

Succeeding as a Personal Injury Lawyer

There are two keys to being a successful plaintiff's lawyer. First, you should only take on cases that you believe are viable. No matter how good a lawyer you are, you cannot win a case that is unwinnable. Therefore, you have to examine the basic elements of liability and damages in every case. You also need to ensure that your client is likeable. If you are not willing to sit down and have a cup of coffee with this person, you probably should not represent them, because if you do not like them, the jury probably will not like them either.

You also want to convey to the jury that something good can result if the jury does what you are asking them to do. There is usually a great tragedy involved in a personal injury case, but you want to give the jury the sense that they are empowered to make the situation better. Conversely, if they are not able to make the situation better, it is very unlikely that they are going to do what you want them to do.

It is also important to demonstrate that the defendant's conduct is aggravating the situation, or that it is outrageous or clearly in violation of the law. People tend to make decisions on both a rational and an emotional basis, and when someone does something that is very outrageous or socially unacceptable, that can motivate a jury to give more money to a plaintiff. Consequently, a case that has such a defendant would have more value. Essentially, you need to look into whether the defendant has broken rules or committed actions that are socially unacceptable. For instance, there is a difference between a person who is drinking alcohol and driving, and a person who is driving while on drugs. Both would be good plaintiff's cases, but if the defendant were driving drunk after having done crack cocaine that case would be even more inflammatory, because their actions are more socially unacceptable.

Also, if the defendant knew that what they were doing was wrong and they chose to do it anyway, that is a huge factor in winning a personal injury case. People understand that human beings make mistakes, and juries are often reticent to punish good people for making mistakes. However, if a company knows that their product is dangerous, but instead of recalling it they continue to produce it, or if a nursing home knows that they have insufficient staff to take care of the elderly and yet they keep taking on new patients, those are the types of acts that make jurors mad, because such actions are not acceptable—they are placing human beings behind profits.

Other personal injury cases that are more likely to be winnable are those that involve an injury to a child, a clergyperson, or a volunteer worker. You should also consider the level of the client's injury—i.e., is it catastrophic? You can often win a major injury case even if there is less liability involved on the defendant's part because the damage factor may have a greater influence on the jury. Another consideration is what type of defendant you are dealing with. Some individuals or companies are not generally liked—for instance, many people have had bad experiences with truckers on the road who cut them off or block their view.

You should also look for cases with factors that will draw upon human sympathy—i.e., a plaintiff who may not have suffered a catastrophic injury, but has a badly burned arm. Uncaring conduct is another important factor in a personal injury case. Perhaps the defendant did not have knowledge beforehand of what they did wrong and they were not intoxicated, but they did not care about the rules or the outcome of their actions—and that is why the plaintiff was hurt.

Of course, you should avoid picking weak cases—i.e., a case where the plaintiff is rude or unsavory, or where there are no independent witnesses, resulting in a "he said/she said" scenario. Other weak cases are those in which the plaintiff is clearly over treated or exaggerating their injuries, or the accident occurred when they were engaged in doing something socially unacceptable—for instance, they were drunk and walking down the side of the road when they were hit by a car.

Finally, another successful strategy as a plaintiff's lawyer in personal injury law is to practice financial discipline. Being a plaintiff's lawyer is expensive; you have to assume the cost of your work until the case is done without receiving any compensation. Therefore, you need to make sure that you have good financial discipline, and that means that you must develop a case budget early on. Basically, you need to figure out how much money you are going to need for experts and depositions, and then you have to estimate how long the case will take, and what other costs will be involved. Simply put, you need to have an understanding of how you are going to finance the case while making sure that the client does not suffer because of lack of resources. You also need to make sure that the client has reasonable expectations with respect to the outcome of the case. You must ensure that you deliver a result to the client in a timely manner, and ensure that they are satisfied with that result. If you do those things, you can run a successful plaintiff's practice.

Looking to the Future

I do not foresee any major changes in the field of personal injury law. Basically, as personal injury lawyers, we are simply telling the story of our client's personal tragedy, and we are asking the community to do justice by someone who has been wronged by someone else. We all have an inherent sense that our society should be fair and just; in fact, our justice system has grown out of our basic sense of decency.

There are some political movements afoot to limit the ability of plaintiffs to hold other people accountable in areas such as medical malpractice, and there have been reforms in relation to class action suits, particularly in the areas of asbestos claims and product liability. In addition, there have been attempts to limit the amount of money people can receive in personal injury cases, or to limit their access to attorneys. However, I believe that the decision making in this area should remain in the hands of the jury, as they are the same people that our democracy flows from, and I think that they have the sense and wisdom to make good decisions. Unfortunately, there seems to be a trend on the state and federal level to continually try to substitute the government's judgment for the judgment of the citizens.

Final Thoughts

There is an old rule in this profession that you can fight to establish liability or you can fight to establish damages, but not both. In other words, few personal injury cases are perfect—i.e., ten witnesses saw the defendant run a red light, your client is badly injured, and there is $1 billion in insurance involved. Normally, personal injury cases are tough to litigate.

At the same time, you can have challenging liability or damages issues, but you should not take on a case that is difficult to win on both counts. In fact, there are some cases that are simply unwinnable—for instance, there are cases on the East Coast where plaintiffs were able to effectively sue their parents for negligent driving, but that would probably not work in the Midwest. Therefore, you have to be aware of your environment and the local values in terms of deciding if you should accept a case.

Key Takeaways

- Probably the best way to determine an effective strategy in these cases is to get to know your client very well. My primary strategy in personal injury cases is to personalize the plaintiff for the jury by learning all that I can about their particular circumstances—how they live, where they live, their family, their job, and who they are.

In addition, you need to know how their injury affects what they did before—in other words, what were their hobbies and extracurricular activities prior to the accident, and how has their injury limited or changed their participation in those activities?

- You want to present your case in a way that shows the defendant was a rule breaker and that their conduct is unacceptable, and you need to emphasize to the jury that we want to deter people from doing such things. Focus on the idea that there were some basic rules and premises that were violated, and those basic rules and premises are not just about the plaintiff—they are about the safety of the entire community.
- After talking to the client, we will get the accident report, and then we will go and visit the scene ourselves. Also, if appropriate, we would hire experts to gather information, such as an accident reconstructionist, or a traffic or roadway engineer. However, experts are best used when their testimony is necessary; the most powerful witnesses in a personal injury case tend to be lay witnesses. Expert witnesses tend to be most effective when they are explaining the industry that they are in, the rules for that industry, why the rules have evolved, and why violating them is a bad thing. You also need to meet with the doctors and nurses who have treated your client, and order medical records and bills from hospitals.
- It is a good idea to make a bullet list for yourself of the three strongest facts, arguments, or legal points in your client's favor, and then make a similar list of the weaknesses in their cases. At the same time, you need to constantly remind yourself that smart, aggressive people on the other side are going to be doing many of the same things that you are going to be doing. Consequently, you should never underestimate the defense, and make sure that you prepare thoroughly for each of the points that they are going to make.

Chris Faiella is a managing member with the law firm of Tatlow, Gump, Faiella & Wheelan LLC, which represents clients in a broad range of litigation focused on personal injury and their tragic consequences throughout Missouri and all surrounding states. Mr. Faiella focuses his law practice on cases involving injuries and insurance coverage, including automobile and truck accidents, insurance coverage litigation, agent negligence, bad faith cases, and other complex injury cases.

Mr. Faiella sits on the board of the Missouri Association of Trial Attorneys (MATA) and is an advocate for and sustaining member of the American Association of Justice (AAJ). Mr. Faiella has also authored numerous articles on trial practice, and is the author of The Missouri Bar Continuing Legal Education Black Book Chapters on Automobile Torts, Evidence – Competency of Witness, Insurance – Bad Faith, Settlement – Mary Carter Agreements (supplement) and Civil Trial Practice – Pleadings (supplement).

Mr. Faiella earned his bachelor's degree in political science in 1989. He earned his law degree from the University of Missouri–Columbia School of Law in 1995. During law school, he served as a research assistant to Professor Robert Lawless and received the American Jurisprudence Award for torts and the Federal Court's Award both for the highest grades in his class.

The Martindale Hubble Law Directory has given Mr. Faiella an AV pier view rating, which is the highest given. He was also recognized by Missouri Lawyers Weekly Newspaper *as one of five attorneys in the publications 2001 "Up and Coming Lawyers" feature. Mr. Faiella was a member of The Missouri Bar's 2002 Leadership Academy.*

Mr. Faiella is licensed to practice in all Missouri courts as well as before the Supreme Court of the United States, the Eighth Circuit Court of Appeals, and the United States District Court for the Eastern and Western Districts of Missouri.

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