



Should Your Client Be in the Courtroom?

By Jessica Hoffman-Brylo, J.D., M.A.

There are many cases where the question arises; do you bring the client to the courtroom? How long should the client be on the stand? The answer depends on your client and the injuries.

These issues often arise in brain injury cases or any other cases where the injuries do not appear to be debilitating, such as soft tissue injuries. The concern with these types of cases is that jurors will devalue the plaintiff's injuries if the plaintiff looks and acts normal (as is often the case with mild to moderate traumatic brain injuries) or does not appear to be in much pain (as in cases of soft tissue injuries). In such cases, it is best to leave the client out of the courtroom as much as possible. Jurors will analyze your client at all times throughout trial. They will watch to see if your client is shifting in the chair due to pain, how he or she acts in the hallways, whether the client is able to communicate with you and seemingly understand trial proceedings. The more they view your client as appearing normal, the lower your verdict will be.

You can easily explain to jurors in voir dire that your client will not be in trial most of the time. Tell them that your client will be here to testify. Beyond that, his or her doctors say that it will be physically painful for your client to sit through trial (if there are soft tissue or other physical injuries) and/or that it will be mentally unhealthy and painful for your client to listen to others talk about your client's deficits and what he or she has lost in life. Ask jurors what problems they will have with you not having the client there most of the trial. (Note the format of this question: Ask them what problems they **will have**, not **whether they will have problems**. The latter gives you no useful information.)

What may surprise you is that clients who are severely physically injured should also be away from the courtroom as much as possible. If there are horrendous scars or burns or your client is now in a vegetative state, give jurors some time to see the injuries (during voir dire and, if applicable,

during the client's testimony), but otherwise have the client leave. This may seem counter-intuitive, but the more people look at something that originally looks horrendous, the more desensitized to it they become. By the end of trial, jurors will have lost the shock factor and will be used to looking at your client's injuries. The injuries will no longer seem so terrible. Further, jurors will assume that if they can acclimate to the injuries, your client probably will get used to them over time as well. They may also feel that your client is there only to invoke their sympathy, which they will then resent. Let jurors see your client just enough to have them be shocked at the injuries. They will remember that feeling throughout trial. Again, explain to jurors why your client cannot be present throughout trial and ask what problems they will have with that.

On a related matter, it is best in any case to have other lay witnesses talk about your client's damages rather than having your client explain them. It will always make your client look like they are asking for sympathy and feeling sorry for themselves when they talk about their own injuries. There may be problems that only your client can talk about, but for the most part, you should be able to find friends, acquaintances and family members to talk about the client's damages. Remember that family members have a stake in the outcome of the trial, however, so as much as possible, have neutral parties explain the injuries (acquaintances, colleagues, the family doctor, etc.). ▲▲▲

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