Presenting Your Client at Trial in an Employment Case

By Michelle A. Reinglass

The art of presenting your client at trial begins much earlier than trial. In fact, it begins in *selection* of your client. Besides the obvious things that lawyers look for, such as likeability, presentability, ability to engender empathy or sympathy. (and such things as whether the client curses like a truck driver), it is important to make sure you have a client with whom you can work together to at least a satisfactory degree. It is also important for every trial lawyer to do more than assess these outward personality or credibility factors. You must evaluate the strengths and weaknesses of the plaintiff, and the case, and begin to imagine how and when to present the plaintiff during trial.

However all the skills and experience in the world will not help you when you draw the "client from hell."

I. PRE-TRIAL

A. Realistic Client & Case Selection

A prominent lawyer who won several large high dollar jury awards said it takes three things to get a large verdict (besides having a valid claim): (a) likeable client; (b) large damages, and (c) large employer (despicable helps). Not all cases are going to be high damage cases, yet they still should bc brought. However, you should keep in mind these risks:

- liability but no damages;
- damages but no liability;
- valid defenses, such as failure to mitigate, or offset

B. Proper Client Evaluation

1. Plaintiff is capable of communicating their legal problems

Caveat: Some people with language barriers, lack of education, or physical or mental impairments, may not be able to easily articulate their facts and may require more assistance and patience in trying to understand their situation. However, be wary if they are unable at all to explain a colorable claim.

2. Plaintiff has the ability to listen

It is important that there be a relationship of trust between the client and attorney. If the client does not want to listen to you, problems will certainly arise down the road. Watch for signs that their eyes are glazing over, they are waiting impatiently for you to finish talking so they can interject and tell you how much more they know than you. If any of these signs exist. think what will happen in trying to prepare the client for deposition, or trial, and the disasters that can happen.

Trials are much like "mini marriages." After the initial "new" attorney-client relationship glow wears off, a person's true personality and character begin to shine through. A client anxious to have the lawyer take the case may have put on their best behavior during the initial meetings. However, once the lawyer and client are "wedded" the proverbial honeymoon quickly ends. They begin moving through the discovery quagmires and deposition "hell" toward trial, and they become, like it or not, "committed." As trial nears, it becomes more difficult for the client to find a new lawyer to take over the case, and courts become less inclined to grant leave to withdraw from a case.

So, as we rewind the tape back to the beginning of the relationship. there are a number of factors that must be assessed before making a "commitment" to a prospective client.

For example, will the client listen to you (or at least feign interest in what you have to say as you orchestrate their life for the next 1-2 years); does the client "know more than" you do? (Bc wary of the client who "knows what to say" at deposition, or trial; lawyers can make especially challenging clients for that reason.)

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Does the client have an "agenda" that is not necessarily compatible with, say, winning the case? (Or is it possible for them to put away their weapons and blackmail. at least until after the verdict?) Does the client have reasonable or unreasonable expectations?

During the initial interview, write down your thoughts and perceptions about the prospective client on the intake notes. What does not make sense or add up? Is there a pit in your stomach? (From something other than the spicy chili you ate at lunch?) How hard are you working to fit the facts into a theme, or legal wrong? Does the client seem sincere and truthful? Has the client been through a dozen lawyers before you, with some unique excuse why each one "abandoned" the client, or the client "fired" the attorney? How hard are you working to explain away negative facts? When lawyers stop being lawyers, and just focus on being "people," they can sense the very same things about a prospective client that a jury can, and will, sense. Remember initial impressions ***do matter.*** So, when the red flags are waving, look at them, study them, think about them, and test them.

That is not to say an imperfect client should be rejected. (We would all be out

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of work, and who says there are perfect lawyers?) But, if you spend the entire initial interview "arguing" with the client, that may well be a sign that this is not a match made in heaven, or that the client will never listen to you. If you cannot feel sorry for the client, you will not be able to portray that client as sympathetic to a jury. If you do not trust the client. neither will the jury. But follow your instincts. Many lawyers have successfully tried cases on behalf of less desirable plaintiffs. But it pays to get a sense of the client and whether the client respects your opinion, is honest and sincere, and was hurt.

3. The client has at least a modicum of appeal

Clients do not need to become your friend, nor do you have to want to hang out with your client. Defense counsel are going to be sizing up the client for "jury appeal." Statistics bear out that juries often award more to plaintiffs who they like, or who are attractive. This does not mean that all plaintiffs must be model-quality in appearance, or have bubbly personalities. However, if a client is eminently unlikeable, cocky or arrogant, rude, boorish, mean-spirited, or so incompetent that you would want to fire the client, then there is a sure bet the jury will have the same reaction.

4. The client has a colorable claim

The legal claims must be identified and evaluated, including contract vs. torts; public policy/tort termination which requires a policy affecting the *public*; private vs. public employer. Assessment should be placed not only on the "wrong" perpetrated against your client, but also on defenses. E.g., did the client wait over a year before coming to you? Statute of limitations. Did the client pursue union remedies? Preemption risk. Did the client sign a release of all claims? Has the client attempted to mitigate damages? Did the client made overtures or comments of a sexual nature in the workplace; will co-workers testify that the client laughed or willingly participated in the unlawful conduct complained of! Did the client get along with others at work? Was the client about to be disciplined or fired when the issues of sexual harassment were first raised? You should ask all these questions before the defense does.

5. The client has incurred or suffered damages

Sometimes we find that perfect client with the perfect claim – but they have no damages. In most sexual harassment and discrimination cases, the plaintiff has suffered some form of emotional distress from enduring the behavior, being subjected to retaliation for rejecting advances, being singled out for particular embarrassing treatment, etc. In a contract claim such as wrongful termination, if the client immediately found a better-paying job, there may be no damages at all, no matter how rotten the employer acted. It is important to fully probe into all possible damages to make sure it is worth your, and the client's, time prosecuting a case.

6. **The client has realistic expectations**

If the client was told by their neighbor and their best friend that "it's a great case," or "eight attorneys say it's a *huge* case," or "this will be all over the newspapers!" or "I know this is a million dollar case," it is important to provide a realistic and reasonable assessment of the case to the client. Remember that these are the ones who will later turn their own assessments into yours: "But *you **told*** me it was worth $1 million!"

7. The client is committed to the case

Litigation is tough on even the most hardened and experienced individual. Costs can be high. Can the client withstand the challenge and scrutiny of an emotional distress claim, exposing the client's private life during the probe of "other stressors"? How does the client react to "homework" assigned, to help investigate the claims. or prepare for discovery responses? Even though statistically most employment cases settle before trial-each case is unique and the client must be committed from the outset to see it through to trial. They will be needed through discovery. for deposition preparation, for their deposition. possibly during other witnesses' depositions, and certainly throughout trial preparation. Can they "stand the heat"?

Also, is the client still employed with the defendant? You must make sure the client is aware of the nuances of being both an employee and plaintiff.

8. What are the client's motivations?

Be wary of clients for whom their case is their entire life, or they are acting out of revenge, or worse, "principle." That will come across to the jury at trial.

9. Involve the spouse

For married clients, it is important to meet the spouse and ensure they are on board for the litigation and have an understanding of what their spouse will be experiencing during the lawsuit. Also, make sure the spouse is not the one driving or

pushing the case. Be wary of a spouse who has to interject and tell the client's story.

10. Other issues

Has the client filed for divorce. or bankruptcy? Filed other claims or litigation? All records should be requested of the client, and ifnecessary, obtained from the court or public agency to ensure that you know what "evil lurks within" those records, or at least be prepared to address issues that may arise from those files. Has the client already seen or retained a string of lawyers? Does the client have a long history of disciplinary problems, or a series of short-term stints at multiple employers? It is important to get a complete work history both at the job in question and beforehand.

11. Make sure you are both a "fit"

Do you see "personality conflicts" at the initial interview? Are you constantly in trial and rely on support staff for most client interaction? Will the client need a lot of hand holding?

C. Evaluate the Defendant

Assess the "dislikeability" of the defendants – how bad was the conduct? Will a judge consider the actions reasonable "business decisions"? Will a jury have sympathy or empathy toward the employer? Will the jury be worried about increasing their taxes by assessing damages against a government agency?

The same questions should be asked about individuals sued as defendants. These and others are all important factors in deciding who to sue. At each deposition, assess how the defense witnesses will do inpresentingthe plaintiff's case to the jury.

D. Select the Proper Court for Presentation of the Case and Plaintiff

1. State vs. federal

Are you familiar with federal court; do you feel comfortable there? If not, can you stay out?

2. Venue (think "O.J." trial)

A plaintiff may be well received in one location, but have the opposite impact across the city or county line.

E. Preparation for Deposition

Make no mistake about it, a client's performanceat deposition may well win, or lose, the case at trial. In order for a client to perform well at trial, they must first perform well in their deposition. It becomes very difficult to "clean up" bad deposition testimony or behavior at trial.

Most plaintiff depositions today are videotaped. Every tic, nervous mannerism, smirk, sarcastic glance at the opposing counsel, is recorded for future viewing by the judge and jury. Jurors can tell if a plaintiff was "cleaned up" between their deposition and trial. If the client performs poorly at deposition, it will be more difficult to present the plaintiffwell at trial. Not always, but often. It is not insurmountable to resuscitate a client who has shot themselves in the foot (or other anatomical part). However it is generally not easy to do.

Moreover. a plaintiffs deposition can cause the case to be lost at summary judgment, eliminating any chance for a day in court. So it is critical to properly prepare the plaintiff for deposition.

Preparation for deposition does not mean meeting for coffee an hour before the deposition. It also does not mean meeting for an hour the day before. Proper preparation requires time, it requires you to be intimately familiar with the client's file, the case, the documents, as well as the defendant's point of view and defenses. It requires you to think of the questions that will be asked, before the client walks into the deposition room. It requires you to think through anything that does not make sense. anything that is illogical, anything that can be torn apart by the adversary.

For example, if your client is saying she did not look for a job because she felt it was futile, how will she explain the fact that the job market in her field was gushingwith comparablejobs, or theeconomy was flush during that period of time? If, for example, another client says that he took home company records because he thought they were available to everyone and belonged to him. how will he respond when shown his signed acknowledgment that he read and understood the company policy on confidentiality which clearly defined what records were confidential, and that they were to remain on the premises at all times? Inconsistencies and obstacles (a.k.a. "trial land mines") should be questioned, challenged and analyzed to your satisfaction.

It is a good sign when the client leaves the deposition preparation meeting feeling scared and exhausted. It is an even better sign when the client later says that the deposition was easier than the preparation for it.

Clients must be educatedon the "golden rules" that roll off of every experienced lawyer's tongue. Why should a client only answer the question that is being asked, and not volunteer other things? Won't it help to get through the deposition quicker by volunteering the "whole story?" Won't I look better if I show how much I know about my case? The answer is of course, "NO," and in fact doing so be fatal for the case. The "yakking" and "blabbing" plaintiff is a dream come true for the defense lawyer. who will take all of those spewed out facts and figure out ways to poke holes in them. Most of the time, the questioning lawyer will turn the "volunteered" information around to the detriment of the client. "So you actually told your supervisor that you felt fine and could perform your job?" However in the non-stop, volunteered narrative your client so proudly provided which far exceeded the scope of the question asked, your client neglected to mention the part about needing short rest breaks because the illness fatigued them.

Also, clients tend to be nervous during deposition and can tend to "hear" incorrectly. Suddenly the client is disclosing confidential. privileged information, not asked for by the question. and the attorney is powerless to stop it in time, because it was not "asked." Once that cat is out of the bag, trying to put it back in becomes an often insurmountable challenge.

One past client, who had been terminated from his 30-plus year career based on false allegations made up by his subordinate employee, only heard the first part of any question, because he was busy formulating his answer in his mind. In response to the question about who he talked to "in preparation for his deposition," he happily named his girlfriend, mother, father, entire family, every friend he ever had ... the list went on for what

seemed an eternity. (My stomping on his foot with my heel failed to trigger any register in his mind that something was amiss.)

The next question was, predictably, "Tell me everything you told your girlfriend." The client became irate, "That's none of your business!" As we took a break, it of course became clear that he spoke with none of these people to "prepare.' for his deposition. However he provided personal data that would have otherwise been off limits. and of course that gave a wider array of people for defendants to investigate about his claims. So, much preparation is needed to try and avoid such "spillage," which can also lead to inadvertent disclosures of privileged information or lead defense on a search for the holy grail.

II. TRIAL PREPARATION

No longer in "dress rehearsal," this is where all the hard work done in preparation will shine through. Among the things that need to be assessed are: When during the trial to call the plaintiff: first, in the middle, or last? Is plaintiff properly prepared to testify? What are the sand traps to be wary of in trial?

A. Start Preparation Early, and Often

Do not wait until 90 days before trial to begin thinking of the theme and focus of the case. Every stage of the case should be geared toward trial and developing a trial theme.

B. Consider a Jury Consultant or Coach for the Plaintiff

As the case progresses, as the plaintiff testifies at deposition, you should be considering if plaintiff needs any professional coaching. Defendants use jury consultants with abandon, so why shouldn't plaintiffs? There are many economical means of doing so.

Jury consultants fall into many different categories. These vary from overall assistance in assessing the case. to working with the plaintiff and other witnesses to prepare for their testimony, to assisting with mock jury, to helping to select a jury panel, etc.

C. Videotape Deposition Review

Lawyers often do not review their own client's videotaped deposition, because they do not intend to present their client in that manner, but rather will present the plaintiff at trial live. However, the defense is chomping at the bit to play for the jury any areas where the plaintiff looked bad. In order to properly present the plaintiff's testimony at trial. you must be prepared to know how the plaintiff looked on camera.

Often, those "bad" snippets are entirely irrelevant to the substance of the testimony. For example, the plaintiff engaged in a heated exchange with the defense lawyer. However, the particular testimony has no relevance whatsoever to any issue. If defense plays that portion. it will be solely to sully the plaintiffs appearance to the jury. Thus, you would need to be prepared to object to such a video clip as not being proper impeachment, and that it is solely being presented to gratuitously taint the jury against your client.

Assess how "different" your client may appear "live" than during the videotaped deposition, and how that could be played up by the defense. "Sanitizing" the plaintiff or the plaintiff's appearance, so as to create a marked difference between the deposition testimony and trial testimony may backfire. If, however, there really is no choice in the matter – plaintiff must be cleaned up – then so be it, but consider whether there is an explanation, such as the particular "bad" segment of videotape happened after multiple sessions without sleep. or plaintiffs doctor has been experimenting with higher dosages of depression medication. Whatever the situation, it is helpful to have viewed the plaintiffs testimony through the eyes of the defendants.

D. Theme Weaving

The theme, developed from the start of the case and refined thereafter, should be woven into every aspect of the trial, including through the plaintiffs testimony. To help simplify and streamline the testimony, and better prepare the plaintiff for trial, it helps to keep focused on how the testimony to be elicited from plaintiff will tie into, or support, the theme of the case.

One of the hardest aspects of going to trial, is figuring out what to weed out. It is much like packing for a week-long vacation, to a place where the climate may change, the dress code may alter from casual to dressy, and other contingencies

must be planned out. It is usually easy to clean out the entire closet to put into the luggage, but it is not practical to take it all, plus with new tightened security and weight restrictions on luggage, things will have to be pulled back out of the suitcase and left at home.

So, use the theme to help guide in determining what stays in and what gets left behind.

E. Strategizing

In preparing the plaintiff for trial, it helps to strategize a number of things, such as:

1. Humanizing the plaintiff

We want the jury to bond with the plaintiff, to relate to the plaintiff, to understand and empathize with the plaintiff. The jury will be very diverse, with people from management and the worker ranks. The one thing they all share in common is that they are employees. Employees, even managers. are still human, with the same human frailties and insecurities as everyone else.

It is important to figure out the "hook" that binds with your plaintiff. Is plaintiffa long-tern employee, someone who rarely missed a day of work, did their job diligently. worked hard. was devoted and loyal to the employer?

Is plaintiff an achiever? Did plaintiff strive to better themself by taking classes, training, pursuing a college degree, seeking promotions?

What importance did plaintiff assign to the job? Did plaintiff leave a solid secure position to take the job with the defendant?

Did plaintiff follow the rules, but the employer did not? Just about every employee appreciates the importance of an employer having rules and following them.

2. What information is necessary to help convey the message as simply as possible, versus cluttering the canvas, or making things too complex.

3. What issues will defendant raise, and how can you counter them?

F. Preparation of Plaintiff for Trial Testimony

Generally this is plaintiffs first time testifying in a courtroom, which alone is anxiety-provoking. The fact that plaintiff will be feeling that their entire life rides on how well they "perform" at trial, will provide even more anxiety. It is helpful to put the plaintiff at ease.

One way and perhaps the best way. is sufficient preparation of the plaintiff for trial. Organize the presentation. Consider an outline of the subject matter areas for direct examination that can be given to the plaintiff ahead of time. Do not write out questions, or answers. This will help keep the plaintiff organized. give some structure, yet not make the testimony sound "rehearsed."

Another way to help relax the plaintiff is giving guidance on attire, and demeanor in the courtroom, with frequent reminders that plaintiff will be living "in a fishbowl" the entire trial. Jurors get bored, very very bored, and they spend an inordinate amount of time watching everyone in the courtroom, most particularly the plaintiff. Jurors watch to see how the plaintiff will react to certain testimony by others. Jurors study the plaintiff to see if they will let their guard down and show arrogance or cockiness. A juror may be driving behind the client on the way to court. Getting plaintiff used to this concept and reminding will help to heighten plaintiff s consciousness about their surroundings and help get them into the habit of remembering they are always on display and that their body language are constantly being "judged."

Prepare plaintiff for cross-examination. This should not be given in outline form nor written out. However. frequency and recency are good concepts to keep in mind as the plaintiffs day for cross-examination nears.

Go over exhibits with the plaintiff. explaining their significance. Go over the points raised by defense counsel during plaintiff's deposition.

Consider a mock trial, including a mock cross-examination of the plaintiff.

Provide plaintiff with the defense trial brief, begin indoctrinating plaintiff to the defense "themes." so that the client can catch them as they are being lobbed at them.

Let plaintiff talk, and make their own mistakes during preparation. You can then discuss what "land mines" they will have stepped in with such a response, explain where defendant will be going with that line of questioning. and how to handle tough areas that were not anticipated (e.g., bringing back to the "theme" all the time). When defendant gets plaintiff off-theme, teach plaintiff to get back on-theme.

G Deciding Order of Witnesses

This is a topic about which good trial lawyers may often debate and disagree. Some are of the school of thought that you always call the plaintiff first. Others believe that you should never call the plaintiff first, but instead let others tell plaintiff's story, paint the positive picture of the plaintiff, before putting the plaintiff on the stand. And others believe that it is best to start with a defense witness ("776" examination).

All of these approaches are right, as long as they are personally evaluated in each trial, because there is no "one size fits all"' approach when it comes to trial.

1. Plaintiff first

First assess and evaluate if plaintiff will make a good witness. If plaintiff is not a good witness, or is unable to be their own "cheerleader," it may be better to start with another witness, someone who can testify to the incidents, or can testify to the impact of the defendant's actions on the plaintiff. If plaintiff is not the most likeable person, it is almost axiomatic that you will not start with the plaintiff. (Note: all "rules" are subject to being broken.)

If plaintiff will be their own best witness, or there are no other witnesses who can tell the plaintiffs story, that would be another compelling reason to start with plaintiff.

2. Third party percipient witness first

This depends on the theme, and what is the thrust of the wrong in the case. If the main focus is how horribly the plaintiff was treated, and there are co-workers who witnessed the behavior, or "me too" witnesses, they may be best to start with before plaintiff. It is much more powerful to have someone with no stake in the outcome tell what happened to the plaintiff first, buttressing plaintiff s later testimony.

It is risky to start out with a "damages" witness first, before the jury is sold on the fact that plaintiff should win. Thus, it is generally best to hold back the spouse or

family member who can attest to the effect of the employer's actions on the plaintiff.

3. Adverse defense witness first

When the conduct of the defendant is egregious, or "shocks the conscience," consider putting on an adverse defense witness first. The more despicable, the better – e.g. the arrogant supervisor who caused the harm. It is always advisable to have deposed the person you are planning to start out with. While you can very successfully call adverse witnesses during trial who have not been deposed, keep in mind this is the jury's first impression of your case through actual evidence. It must be strong, powerful and have an impact. This is not the place to take a chance by putting on an unknown person who could trip you up and engender sympathy from the jurors and sentiment against your client.

This is also the place for effective use of videotaped deposition testimony. If the adverse witness was caught in lies during deposition, it can be very powerful as the first person the jury hears and sees.

H. Presenting the Facts Through the Plaintiff

Direct examination of the plaintiff always starts out with the jury's attention, whether the plaintiff is first or later in the trial. The reason is that this is the person with first-hand knowledge of what happened, and how credibly the plaintiff comes across may well determine if they win or lose. The jury is rapt with attention and anxious to hear the story.

However, it is also easy to turn an event which the jury is awaiting with anticipation. into something boring and dry which causes the jurors to "shut down."

Keep in mind the adage of starting and ending strong. Determine when to fit in the plaintiff's employment history, to the extent it is relevant or necessary, but do not present a long, droning self-lauding narration of every minute accomplishment the plaintiff achieved. Instead, hit the high points (e.g., the plaintiff worked 29 years for the defendant, starting as a grocery checker, or box boy/girl, and worked up via 10 promotions, finally becoming a manager, their dream job).

Get to the heart of the case, the employer's bad acts, as quickly as possible. The jury is still interested as long as the initial presentation was brief and to the point.

Listen to your client! Just because we may think that direct examination is "easy" (it is truly not), the plaintiff may not stay "on script." The questions that were readily understood during *'practice," may not be clear at trial. Remember the plaintiff is now under more stress, in a strange environment, on display with jurors completely focused on them. They may get "stage fright" or develop other anxiety. Thus, the plaintiffs lawyer may not simply ask questions robotically and expect the plaintiff to "perform." If the plaintiff is not following or hits a stumbling block, you want to overcome that hurdle as soon as possible.

Be sure to hit head-on the adverse points. Take the "sting" out of these facts before defendants get their turn.

Keep it simple – ask short questions, elicit short but complete responses.

Decide the "high notes" on which to end plaintiff's direct examination.

A successful trial lawyer advised long ago: "Talk in pictures.'" Help the plaintiff be descriptive, visual, make the jury feel they are there with the plaintiff.

Remember: It takes longer to "shorten" the presentation than it does to prepare it. That time is well spent.

Use graphics where possible. Use the board and write a lot to mark indelibly in the jury's minds the key points from plaintiffs testimony (and others' as well). Pictures are still worth 1.000 words.

After putting together the direct examination, consider what can be cut while still keeping intact the key points (important facts, law and emotions).

I. Presenting Plaintiff's Emotional Distress

Keep in mind, today's jurors grew up in the era of "tort reform," McDonald's hot coffee, addicted smokers seeking compensation from tobacco companies, and lawsuits about trans fats. They are more cynical than in the past. Jurors still can and do give awards, and large awards. They are, however, more inclined to demand "Show me" before giving that award. Jurors are still ... human. They can and do still react to the human drama, and to abuses by employers. It is important to emphasize the harm done by the *employer*, the reprehensible nature of its actions, and find those things in your case that will connect a jury, the type of harm that they can relate to.

1) Find the emotion in plaintiff's tcstimony, as well as in other witness' testimony. It does not always show itself in neat packages of feelings, it often comes out through other portions of the testimony when the plaintiff is not expecting to be talking about "feclings."
2) Do not lose sight of the "theme." Simply presenting plaintiff as an emotional basket case will have little or no effect if the "emotions" are not tied to defendants' actions.
3) Let plaintiff tell the story about their damage as much as possible, flaws and all. In other words, if plaintiff is floundering around, it is usually because of the emotion being felt. Let the plaintiff unfold to the jury what happened, and the impact it had.
4) Time lines are good to show plaintiff's emotional state before the "bad acts," and the emotional state after defendant's "bad acts."'
5) Prepare in advance of plaintiffs testimony by consulting with your experts. Elicit from plaintiff the facts that will later be attested to by the experts as giving rise to damages.
6) Keep it brief, but *powerful*. Jurors become uncomfortable watching anyone sit on the stand and cry uncontrollably for lengthy periods of time. Jurors may distrust a plaintiff they feel is "trying" to gain their sympathy.
7) Where possible rely on family, spouse, friends, even co-workers to describe the "before" plaintiff as contrasted with the "after" plaintiff, to describe the impact of the defendant's actions on the plaintiff, and the long-lasting effects.
8) Use testimony of treating doctors or psychologists where applicable. If the plaintiff sought no medical or psychological treatment, it is important to drill down with the plaintiff how he coped? Who was his "rock," who was her "support group"? What did they do, who did they turn to, to get out of bed every day, to keep themselves going. Probe and try to reach what is inside your client.
9) End strong and powerfully, avoiding anything that would smack of '+cliche" or manipulation of the jury's emotions. ■