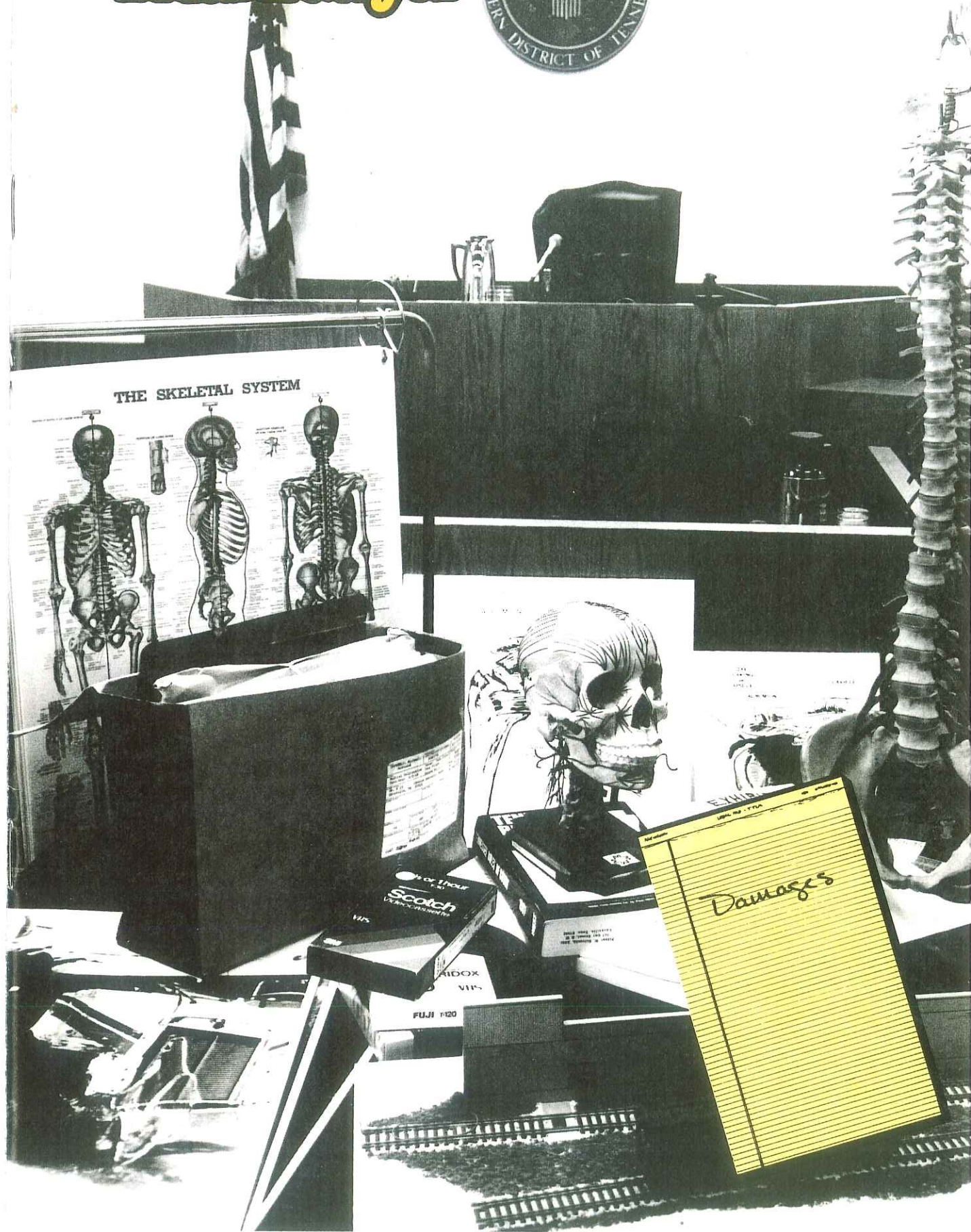


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How To Use Lay Witnesses To Prove Damages

By

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A jury that can identify with and feel for the plaintiff, is a jury that can award a substantial judgment to the plaintiff. On the other hand, a jury that does not empathize with the plaintiff is one that is going to disappoint the plaintiff and his/her attorney. Lay witnesses can be the most devastating weapon in the plaintiff's attorney's arsenal. Use them correctly and you can marvel at the results. Use them incorrectly, and you can limp home from the battlefield.

A lay witness can specifically describe to the jury how the client's injuries have affected his/her daily life. A likable, honest lay witness can *humanize* the plaintiff. "Humanizing" the plaintiff is the essence of the lawsuit. If you like someone, you want to help them. If an individual disgusts you, you are hard pressed to want to help. Jurors are no different.

There are some occasions where a personal injury lawsuit goes to the jury without any medical testimony. In those rare instances, the attorney representing the plaintiff obviously is relying upon lay testimony only to prove personal injury damages. This article will help in those rare instances where no medical testimony is contemplated at trial. In most instances, however, the plaintiff relies upon the deposition or live testimony of at least one medical doctor. Lay witness testimony must not contradict the testimony of the physician. It is perfectly appropriate for lay testimony to expand upon the physician's testimony, but it should not contradict it.

For example, if the plaintiff's own attending physician testifies that the plaintiff can climb a ladder, you should not produce a lay witness to testify that "I never see Bill [plaintiff] climbing a ladder anymore." You must *bold* the testimony

of lay witnesses in order not to contradict expert testimony.

Obviously the attorney should have an in-depth discussion with the client and other key individuals (i.e., family members, friends, fellow workers, etc.) to discover what changes have occurred in the client's life due to his/her injuries. This discussion should include questions concerning the physical pain and suffering as well as mental anguish the client has endured, changes in the client's professional and social and family life. Not only should you ask the client about his/her health and lifestyle prior to the injury, you should ask other lay witnesses what they know of this as well. Often the single best question to ask a lay witness is "How is Sally different from the way she was before the car wreck?"

A good question to ask potential lay witnesses in informal discussion with you is, "What is it that Sally can still do now that she could do before the wreck, but she simply has trouble doing now?" If the witness and the answer are good, the same question should be asked in front of the jury with that witness. After all, the jury needs to be aware of how the client's life was *altered* by the negligence of the defendant. Often the "altering" is not a total disability but only a restriction or impairment. Lay witnesses usually are the better persons to bring out impairments to lifestyle or abilities to work than medical physicians.

You must discover from your client who the potential lay witnesses in the case are. Tell the client the importance of these lay witnesses. You can ask the client who he/she thinks will make a good witness, but often your client's judgment is faulty on this point. You must decide who will

make a good witness at trial.

Except in absolutely catastrophic injury cases (which ruin a person's entire life), in your average-run-of-the-mill lawsuit, jurors look to the impact of the injury on the plaintiff's ability to earn money at work. Therefore, it is the lay witness in the workplace that becomes one of the most important witnesses in the personal injury trial. Supervisors, co-workers and bosses can assist the plaintiff's attorney in proving the damage to the plaintiff's ability to make money at work, the reduction in earning capacity. An office manager can testify to the amount of time lost from work, salary fluctuations, reductions in pay, etc. The plaintiff's supervisor can be invaluable in proving a decline in the plaintiff's productivity and potential earnings loss, perhaps the plaintiff's ability to cover a particular sales territory, complete projects on time or effectively perform manual labor jobs. A supervisor can show a jury how the plaintiff worked before the car wreck and how he works today.

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Co-workers are absolutely invaluable in proving damages. A co-worker, who worked with the plaintiff daily long before the wreck and through the present time, will have knowledge of the plaintiff's work habits. He also will have knowledge of the plaintiff's injuries as to how those injuries affect the plaintiff on the job. For example, a co-worker can testify to seeing the plaintiff take frequent breaks during the day to rest (and the plaintiff did not do this before). It is the co-worker who can describe the plaintiff stopping in the middle of a project to hold his back, and he never did this before the wreck. At trial you cannot ask this witness if the plaintiff was in pain, but you can ask the witness to describe the look on the plaintiff's face when he stopped to hold his back. The usual response is "He would grit his teeth, frown and just look like he was in pain."

Many times the injured plaintiff did not work at all before the accident in question. Then you must prove the damage to this person in the home place. For this, neighbors, close friends and family members make excellent witnesses in proving the client's problems at home. There is no set rule as to whether a close friend, family member or neighbor will make the best witness. It should be kept in mind as a general rule that jurors usually take a jaundiced look at testimony of a spouse concerning injuries. Jurors usually believe that a spouse has an economic interest in the case and

therefore suspect that testimony of the spouse. Honest neighbors, on the other hand, have no economic interest in the matter and are generally viewed as being more trustworthy on this question.

This is not an exact rule, and you must judge the situation individually in each case.

A neighbor can testify to the fact that due to the client's injuries, the client no longer works in the yard; the client does not take walks down the street as he/she used to do; the client does not come by the neighbor's house to visit or watch tv; the client no longer plays games in the yard with the children.

Close personal friends can testify about the absence of a desire in the plaintiff to go out for dinner as he/she used to do. Some of the most devastating testimony I have heard is this simple answer, "Well, this car wreck just sort of seemed to knock the desire out of Sally to do anything." That testimony will be remembered by the jury long after they have forgotten what the attending physician has said.

Family members are important to prove emotional impact of the injury. They can describe the frustration, anger, depression and despair of the injured plaintiff. If it is a serious injury, family members can be used to describe how long it takes the plaintiff to button a shirt, walk up a flight of stairs, open a jar, pick up a bag of groceries or fix supper. A husband in a wife-injured case can testify that he is now the one that has to do the majority of the housework.

If the plaintiff has sought religious assistance and counseling, a minister might be an excellent witness. A minister can testify to counseling and consoling the plaintiff, to healing and prayer services held by the church for the client. (This has the benefit of showing that a respected minister likes the plaintiff as well as members of the plaintiff's church. This has a "spill over" affect upon the jury. If so many other "nice" people like the plaintiff, the jury should too.)

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In utilizing lay witnesses to assist the plaintiff's attorney in proving damages, the attorney must remember that the appearance and attitude of the witness at trial is important. A witness may have a great deal of knowledge regarding the client's injuries, but if the witness is not likable or believ-

able this knowledge loses a great deal of its value. What you should be looking for is a lay witness who has personal knowledge regarding how the client's injuries have affected his/her life, and this witness must have jury appeal. A few good witnesses who meet these requirements are *far better* than numerous mediocre or poor witnesses. It does not take a lot of lay witnesses to prove the point. The Marines have a saying, "We are looking for a few good men." In a jury trial, what you should be looking for are "a few good men and women."

Your job is to maximize the recovery for your client. In this author's opinion, lay witnesses are very important to help you accomplish that job. A knowledgeable, likable lay witness is a major asset to the attorney attempting to obtain substantial money damages for the plaintiff.



ABOUT THE AUTHOR . . .

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