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# Maximizing general damages through storytelling

## CRAFTING IMPACTFUL STORIES IN CATASTROPHIC-INJURY AND WRONGFUL-DEATH CASES

Storytelling is one of the oldest forms of passing on information in human society. A story that grabs you and captures your attention is one that impacts your life; it is one you remember, and it is one that has meaning. As a society we recognize the most compelling stories from art, literature and film with awards and acclaim every year. We are genetically wired to be drawn in by stories that resonate with us and these stories can then shape our beliefs and our behaviors.

The importance of stories is a concept that spans all facets of human life and in the context of a catastrophic injury, or a wrongful-death case, your client's story is the cornerstone of your case. Presenting that story and showing, not just telling, the defense attorney, adjuster, or the jurors is how you are able to obtain justice and maximize your client's results. In presenting your client's story, you need to be able to illustrate what happened to your client, what they have gone through and what they are going to continue to go through for the rest of their life.

A juror's decision to award meaningful damages depends not just on what evidence they hear, but on how deeply they comprehend the human impact of that evidence on your client's life. We do not want to just present facts; we want to help jurors understand the profound ways a preventable tragedy has altered our client's life. Through strategic storytelling, we transform evidence into human experience, creating an emotional bridge between jurors and our clients' suffering. This thoughtful approach to case presentation doesn't just inform jurors, it helps them feel the weight of their responsibility to deliver meaningful justice.

Understanding how to effectively present your client's story provides

plaintiffs' attorneys with a distinct advantage. While defense counsel can dispute liability theories or challenge damage calculations, they cannot easily counter the authentic human experience of loss and suffering. This advantage emerges from our unique position on the plaintiffs' side: We have direct access to our clients' lives, their struggles, and their ongoing challenges. When we thoroughly develop the evidence of our clients' lived experiences, it becomes uniquely powerful testimony, authentic, resonant, and essentially unrebutted at trial. The purpose of this article is to help provide a timeline and outline to effectively gather the information you need, prepare it and present it so that you are able to fully and completely communicate the story of what has happened to your client.

### Facts are only a foundation

The key to effectively presenting your client's story lies in the systematic process of obtaining the necessary facts and evidence, while at the same time learning the intimate details of what has happened to your client and how it has impacted them. As attorneys, we are all well-versed in the mechanics of litigation, propounding and responding to discovery, obtaining medical records, taking depositions of treating physicians, and retaining experts. These technical elements form the necessary foundation of our cases.

Medical records document injuries, but don't convey how those injuries have transformed our clients' daily lives, the morning routine that now takes three hours instead of 30 minutes, the parent who can no longer lift their child, the athlete who will never run again.

Expert testimony can help make complex medical concepts

understandable to the jury, or connect the dots for liability or causation, but the jury also needs to hear from the plaintiff and their friends and family about the human cost. The family dinners disrupted by chronic pain, the depression that follows loss of independence, the strain on relationships when roles fundamentally change.

Too often, we focus our energy on developing the technical aspects of our cases while underutilizing the powerful human evidence available to us, and only to us, as plaintiffs' attorneys. This human evidence must be part of your client's story and it needs to be gathered early and often during the case. By developing the evidence, *and* the story, from the outset of our cases we create a complete picture that when presented in full to the jury justifies an award of substantial damages. This comprehensive approach helps jurors understand not just what happened to our clients, but who they were before and how this incident has fundamentally altered their lives.

### First, learn the story

This begins the first time you meet your client. We cannot stress this enough – your client's story is not a static one. It will develop and change as he or she progresses through their case and if you don't begin gathering the evidence early, it may not be there later for you to obtain. Because of this we recommend that you start filming your clients early in the case. It's that simple, and it's that important. You should do it in every case. You don't need a production crew or fancy equipment, your smartphone or small camera will do just fine. We all have the technology right in our pockets to capture these crucial early conversations with our clients. Set up regular video sessions with

your clients, whether filmed in person or through Zoom. And remember, these recorded meetings with your clients are privileged and confidential as codified in California Evidence Code section 954, and are not discoverable.

We would also recommend that you speak with not only your client, but also their friends and family and record those conversations as well. Keep in mind that unlike the conversations with your client, conversations with his or her friends and family could potentially be discoverable. However, these recordings will be protected by the work product privilege under Code of Civil Procedure section 2018.010 and not likely discoverable absent an order of the court compelling production.

An absolute privilege is given to evidence that reflects “an attorney’s impressions, conclusions, opinions, or legal research or theories.” (Code Civ. Proc., § 2018.030, subd. (a).) Such evidence is not discoverable under any circumstances. A qualified protection for all other work product. The material “is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party’s claim or defense or will result in an injustice.” (Code Civ. Proc., § 2018.030, subd. (b).)

Collateral recordings of friends and family may straddle these two areas of privilege with portions qualifying for absolute protection and other aspects only the qualified protection. This should not deter you from obtaining this crucial information; however, it is something you should be mindful of when conducting this evidence gathering.

#### ***Building trust and rapport***

Building trust and rapport with your clients begins with these early conversations. In these initial interactions with your clients, focus on understanding who they were before the incident. Let them talk. Let them share. The raw, immediate account of how their lives have changed will itself change over time and may be difficult to replicate months or years later. These early recordings

become invaluable as your case develops – when you’re drafting the complaint, preparing discovery responses, or developing your demand or mediation presentation, you’ll have your client’s authentic voice and experiences to draw from and utilize.

As you build this relationship, you will find that clients naturally will share more than just facts. They’ll remember photographs tucked away in drawers, videos from family events, text messages that show their daily routines before everything changed. Each of these pieces of evidence will help you construct a more complete picture of their loss. Encourage clients to gather these materials. Every photo, every memento, every piece of correspondence adds another layer to their story. Get this evidence and preserve it for use in your case. Make sure to inquire of your client’s friends and family what photos, videos, cards or messages they may have and get them also.

#### ***The story of a dream destroyed***

A recent case we handled is a good example that demonstrates the power of gathering the elements of the story early and often. This case involved an adolescent boy with a peanut allergy who suffered a traumatic brain injury as a result of corporate negligence. While meeting with our client and his family early and during the case, and recording detailed interviews with them in their home, we discovered layers of their lives both before and after the boy’s injury. What emerged was the heartbreaking story of a dream destroyed.

Before his brain injury, this boy was a soccer star in his hometown, ranked among the top players in his state, with realistic dreams of playing soccer in college. Their home told part of the story, and we filmed it all. Walls lined with trophies, awards, and photos illustrated what had been and what was lost. Soccer balls from championship games, team photos showing the boy beaming in his uniform, action shots of perfectly executed plays. These recordings helped us be able to show, not just tell, our client’s story and demonstrate how each

item was a step on a path that had been suddenly, permanently altered.

Through our recorded conversations, the boy and his family shared memories of early morning practices, weekend tournaments across the state, and the pure joy the boy found in the game. We interviewed his former coaches who spoke about his natural talent, his leadership on the field, and his dedication to improving his skills. Teammates described a player who made everyone around him better.

The recorded interviews, along with recovery footage taken over time by the family, likewise captured the boy’s difficult journey after the injury. We documented his determined fight to recover, his grueling physical therapy sessions, and the incredible progress he had made. But these same recordings revealed intimate moments of realization – the subtle ways he had come to understand that some dreams were now out of reach. His parents shared how he still occasionally took out his old cleats, holding them silently before putting them away again. We filmed him unable to button his own shirt because of the spasticity in his hands.

These early interviews, photos, and videos became powerful evidence of both what was lost and what remained – a young athlete’s shattered dreams alongside his unwavering resilience. This wasn’t just a case about a brain injury caused by corporate negligence. It was about the human cost of that negligence, about dreams deferred and a future forever altered.

The key to this process is consistency. Meeting with your clients regularly throughout the case, whether on Zoom or in person, helps you understand how their story continues to unfold. Each conversation reveals new layers of loss, new challenges they are facing, new ways their injury or loss affects their daily life. A father realizes he can’t walk his daughter down the aisle at her upcoming wedding because of his injuries. A widow discovers her husband’s last voicemail while cleaning out her phone, his voice casually saying he’d be home for

dinner. A mother notices her injured son watching silently from his wheelchair as his younger siblings play basketball in the driveway. These moments, captured through these ongoing conversations (hopefully recorded) with your clients, become the threads that weave together a powerful narrative of ongoing loss. They remind us that our clients' stories don't end with the incident; they continue to evolve, revealing new dimensions of impact that must be understood and shared.

### **Illustrate the story**

Once you've gathered the evidence and pieces of your client's story, you need to make it visible and tangible for jurors. It is vital that you show and not simply tell your client's story. In today's society we are all conditioned to receive information in a multimedia context. The science of learning has shown that not everyone consumes information in the same way. Some people are good at listening, others need to see it, and some prefer to read it themselves. Preparing the presentation of your client's story needs to touch upon all of these media. Complex injuries, family relationships, and life changes can be hard to grasp through testimony alone or medical records or documents. This is where thoughtful visual illustration of your client's story becomes crucial. The good news is that in today's age of technology, this is easier than ever.

Start with the basics: demonstrative evidence that clarifies complex facts. In catastrophic-injury cases, simple anatomical illustrations can often work better than elaborate animations. Jurors need to understand what happened, but they don't need to get lost in technical details. If your case requires an accident reconstruction, it should tell a clear story, what went wrong, why it matters, and how it could have been prevented. For example, in a serious trucking wrongful-death trial involving punitive damages we utilized a visual animation at trial to depict the collision sequence for the jury. The defendants contested our use

of it because they had admitted liability, however, we argued it was relevant to demonstrate why punitive damages were warranted. Specifically, it supported our arguments that the defendant did not simply doze off, but was passed out because he was under the influence of prescription medications. Through the visual animation we were able to demonstrate how the driver crashed into a line of cars and then for 11 seconds, while plowing through them and crashing into the center median, never once hit the brakes. The jurors being able to see all of the carnage the defendant was causing during those 11 seconds helped them reach the determination that the driver was impaired despite an inconclusive drug test and they found that punitive damages were warranted.

But when demonstrating your client's damages, the most powerful visual evidence often comes from more personal sources. "Day in the Life" videos show jurors what statistics and medical records can't. When jurors see your client struggling with their morning routine, fighting through physical therapy, or sitting alone in a room once filled with family activity, they understand losses that words alone can't convey. These don't need to be professional productions and often it's best when they aren't. Sometimes raw footage captured by family members with all of its production imperfections tells the story more authentically.

An example of this is in a case where we represented the heirs in a wrongful-death case where a teenager had died as a result of the negligence of a school district, and we needed to show jurors what his loss meant to his family. We gathered family home videos showing simple moments, the teenager helping his younger siblings with homework, celebrating his mother's birthday, playing basketball with his father. These ordinary scenes became extraordinary evidence of relationships now severed. Text messages between mother and son showed daily check-ins that would never happen again. School assignments

and college applications demonstrated dreams that would go unfulfilled. And to underscore the importance of early and ongoing client contact, we learned about all of these things during our recorded interviews with the plaintiffs and their family and close friends. We gathered this evidence and then were able to prepare a visual presentation that was instrumental in reaching a resolution.

### **Present the story**

We have used the word present rather than tell, because it is important that you show and not just tell your client's story. Here's where everything comes together, where we transform evidence into the compelling narrative of your client's life and their loss. The most powerful stories come from authentic voices. Whether it's a deposition, a settlement conference, or trial, let your clients speak their truth. Sometimes we lawyers get too caught up in legal language and forget that simple, honest testimony about loss resonates more deeply with jurors than any polished presentation.

Your role is not to put words in your client's mouth, but to help clients discover how to tell their own story effectively. This begins in those early recorded interviews. It may not happen the first meeting, but, as you meet with clients over time, you will learn how they communicate, when they open up, what memories resonate most deeply, and where they struggle to express themselves. Some clients need gentle prompting to share difficult memories, while others need help staying focused on specific moments rather than general statements. Through your repeated conversations, you will have discovered which details carry the most emotional weight, which experiences best illustrate their loss, and how to help them work through emotional blocks that might prevent them from sharing important parts of their story.

The key to effective witness preparation lies in helping clients understand that they don't need to exaggerate or dramatize their experiences. Explain to them, that words

like “can’t” “never” and “unable” should only be used when they are absolutely unable to do something, have never done it, or could not physically do it even if somebody ordered them to. The truth of their loss, when properly presented, carries sufficient weight. Additionally, teaching clients to ground their testimony in specific examples rather than general statements helps them maintain credibility while conveying the full impact of their injuries or loss. If you work with your client early and often, by the time they reach their depositions, they have had practice talking about their experiences in a way that feels natural to them. They’ve learned how to articulate their loss without feeling overwhelmed. They don’t need scripted answers because they’ve become comfortable sharing their authentic memories and emotions, often the most compelling evidence we have.

This approach becomes particularly powerful when working with families, as each member brings their own perspective to the narrative. In wrongful-death cases, for instance, we help each family member find their authentic voice to tell their unique part of the story. A wife might share how the house feels empty without her husband’s morning-coffee routine. Their teenager might describe struggling with homework, missing the patient way their father would help explain difficult math problems. Their younger child might talk about setting the dinner table and still sometimes putting out daddy’s plate by mistake. Each of these authentic moments are threads of the story that are discovered and developed through our early interviews and ultimately become part of the larger tapestry of loss.

These personal details and specific memories do more than just illustrate non-economic damages, they help jurors understand the full human impact of the defendant’s negligence. When a young mother describes not being able to run after her toddler because of her injuries, jurors grasp the meaning of “loss of quality of life” in a way that no medical record could convey. When a son shares how his

father’s death means his father will not get to see him graduate college or meet his future children, jurors understand that wrongful death damages extend far beyond the economic claims for loss of support.

You want your jurors to understand the long-term future impact of the loss or injury. Show them how today’s losses ripple into tomorrow’s missed opportunities. A teenager’s sports injury isn’t just about current pain and medical bills, it’s about the lost college scholarship, the ended dreams of playing professionally, the lifetime of modified activities and what-ifs. These aren’t just stories about what happened; they are stories about what should have been, about what now will never be and about futures forever altered by someone else’s negligence.

### **The before is as important as the after**

Whether it is a catastrophic injury or a wrongful-death case, one of the most critical aspects of storytelling is ensuring that jurors fully grasp who the plaintiff or the decedent was before the subject incident. In a wrongful-death case, as the decedent can’t provide any testimony, it is crucial that you show that this person who passed away was not just a name on a piece of paper, but was a deeply valued and irreplaceable piece of a family. The goal is to paint a complete and vivid picture of the decedent’s role in the lives of their loved ones. Each relationship is unique and must be expressed in a way that resonates emotionally with jurors.

To do this, start by exploring the decedent’s connections with each family member. What traditions did they share? How did they provide love, support, and guidance? Bring to life the real moments that demonstrate their impact, whether it’s a father reading bedtime stories to his daughter, a grandmother teaching her grandson how to cook, or a husband and wife sharing quiet moments over morning coffee. These details create a narrative that jurors can see and feel.

Equally important is demonstrating the void left behind. This isn’t just about stating that a spouse or child is grieving,

it’s about showing the practical and emotional consequences of the loss. A widowed husband struggling to keep up with household responsibilities, a child missing their parent’s help with homework, a mother who now dreads family gatherings because one seat is permanently empty. These are the elements that make the loss real and tangible.

This same formula is applied in a catastrophic-injury context as well. Helping the jury understand what his or her life was like before the injury is key in helping them to understand the impact the incident had on their life. The jury can only truly understand what your client has lost when they understand who they used to be. Understanding that allows the jury to fully appreciate the change in who they are now, and who they are going to be in the future.

### **Overcoming the client’s emotional barriers**

One of the greatest challenges in developing a compelling story in a catastrophic injury or wrongful-death case is helping clients recall and articulate memories when they are still deeply immersed in grief and denial. In the wrongful-death context, survivors’ guilt and trauma can make it difficult for family members to speak about their loss, let alone relive cherished moments. With catastrophic injuries, often your client won’t want to speak about the full effect it has had on them and will avoid those topics.

To break through these emotional barriers, as you meet and work with your clients, use strategies that ease them into the storytelling process:

- **Memory exercises:** Encourage clients to go through old photos, letters, or home videos. This can help jog memories and bring back sensory details that add depth to their testimony.
- **Guided conversations:** Instead of asking broad questions like, “What was your relationship like?” prompt clients with specific moments: “Tell me about a time your father made you laugh when you were feeling insecure about your



grades.” These types of prompts help unearth meaningful stories.

- Third-party witnesses: Engage friends, colleagues, and extended family who can provide additional perspectives. Sometimes, an outside voice helps fill in gaps and offers a clearer picture of the decedent’s influence.

### **Practical execution: Building and presenting the case**

The best stories don’t emerge in a single interview. They evolve over time. Conduct multiple interviews with clients and key witnesses, allowing memories to surface organically. The first conversation may yield basic information, but as trust builds and emotions settle, deeper, more impactful stories emerge.

Using this layered approach also ensures consistency. Clients who struggle in depositions or trial testimony often do so because they haven’t had time to process and articulate their experiences. By working with them throughout the case, they become more comfortable and confident in telling their story.

### **Multimedia storytelling**

As discussed above, jurors are more likely to connect with a story when they can see and experience it. Words alone can be powerful, but integrating multimedia elements – videos, photos, letters, voice recordings, and even music – can make a profound difference. For example, a slideshow of family photos showing a father attending his child’s soccer games, a home video of a mother dancing in the kitchen with her kids, or a voicemail left by a lost loved one can have an emotional impact that no expert testimony can replicate. These materials make the decedent real in the eyes of the jurors.

### **Preparing for defense tactics**

Defense attorneys will attempt to downplay emotional damages. They may frame a decedent’s role in the family as minor or argue that grief diminishes over time. To counteract this, prepare clients for deposition traps. Teach them to stay grounded in the truth, using

specific examples, grounded in memories, rather than general statements. This was touched upon above, but, it is crucial they don’t exaggerate or overstate anything. Your client’s credibility is paramount to preserve. Admitting something that may not be a great fact when asked about it is infinitely better than being caught trying to hide it. When that happens, it can be a blow that can be hard to recover from.

A well-prepared witness doesn’t just say, “I miss my husband.” They say, “Every morning, my husband used to make coffee and bring it to me in bed. Now, I wake up to silence, and it feels like a part of me is missing.” Or in an injury case, “my husband used to get up and make me coffee and bring it to me in bed, now he still tries to but, I have had to ask him to stop because his hands shake so bad now that he has spilled it on me too many times.” These types of responses resonate with jurors and prevent the defense from minimizing the loss. Jurors resonate better as well with an injury client discussing how they are trying to overcome their limitations than simply describing what their limitations may be.

We had a tragic wrongful-death case where a daughter struggled with survivor’s guilt and initially found it difficult to speak about her father. In our early meetings, she struggled and could barely speak without becoming paralyzed by emotion. It was not just tears; her memory would go blank and she would feel physically ill and emotionally frustrated with her inability to recall and share her emotions about her father. Through careful preparation, she was able to recall the moments that truly defined their relationship. Conversations with other family members helped too because they had better access to shared memories and were able to remind her, triggering even more memories and emotions in her mind. We spent time walking through all of this and she had several breakthroughs, some of which were filled with joy as she remembered special moments with her father that were tucked deep inside her brain. By the time she testified, she spoke with confidence

and clarity, making her account not only credible but profoundly moving.

### **The ultimate goal**

The ultimate goal is to create an emotional bridge between your client and the jury. People respond to human, relatable moments. If a husband always sang his wife’s favorite song in the car, get that song into evidence and then play a short clip of that song during closing, preferably along with family pictures.

When jurors feel the loss, they understand the stakes. And when they understand the stakes, they are more likely to return a verdict that reflects the true magnitude of the loss your clients have suffered. At its core, storytelling in wrongful death and catastrophic injury cases is about honoring the depth of the human experience. It transforms legal arguments into lived realities, statistics into personal tragedies, and your case into an opportunity for justice. By crafting a compelling, emotionally resonant narrative, we help jurors see beyond the legal complexities to the human truth at the heart of the case, guiding them toward a verdict that truly reflects the depth of the loss and the justice it demands.

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