

By Clinton M. Hodges

# Battling through Life Sentences

## Litigators need to identify and neutralize the "limiting beliefs" of clients and witnesses

The unseen can play a critical role in a trial. This fact has been underscored by recent speculation over whether juries have been affected by such public events as the terrorist attacks of September 11 or the epidemic of corporate skullduggery.

Often overlooked is another category of the unseen: the contents of the minds of parties and witnesses that form "limiting beliefs." We all have limiting beliefs. From moments of fear or danger we experienced in childhood, we have formed largely irrevocable opinions about how life is and how we must act to ensure future safety. While the outward manifestations of these opinions may be quite visible to those around us, limiting beliefs remain largely buried and invisible. I call them "life sentences" because we can carry them for life.

However, a life sentence can be identified and commuted—if we know what it is and how to look for it. After more than two decades of picking juries and trying lawsuits, I have concluded that this area of trial preparation is easily as important as guessing whether external events will affect jury results.

I became very interested in this concept many years ago when a client objected to cutting his hair for trial. His objection was so firm that I became quite interested and not a little concerned. After much prodding, he confided in me that his ears were deformed. When he finally showed them to me, I was astonished to see that his ears looked quite normal. I pointed this out to him in front of a mirror and asked him where he had gotten the idea that they were deformed.

He told me this intense feeling sprung from what he had experienced one day as a youngster when he burst into the family kitchen after school. His mother was apparently gossiping on the telephone and looked upset when she saw her son. Then he heard her say, "I have to hang up now. Billy has just come home, and little pitchers have big ears." He had been kidded about the size of his ears on earlier occasions, so his mother's comments were the last straw. He had long forgotten why he wore long hair but vigorously protected his right to do so. We both began to laugh, and my client ultimately agreed to cut his hair for trial.

As litigators, we do not have the time or wisdom to clear up life sentences for prospective jurors (although we can reject them if we suspect they carry life sentences that will work against our clients). Therefore, we must turn our attention to our clients and to the wit-

nesses we intend to call and to be on the lookout for their life sentences. Common life sentences to watch for include:

- **For me to succeed, disaster must be at hand.** Only when being dragged up the steps of the gallows does this client finally call a lawyer. Why did the client wait? What causes this kind of eleventh-hour behavior? How is such behavior likely to effect the client's case and ability to prepare properly for trial? This life sentence must be dismantled, or you will inevitably have a client who comes in at the last minute with "suddenly discovered" evidence or new witnesses that require revamping the entire trial strategy.

- **I don't want the money.** This life sentence is impoverishing to both the client and the lawyer. It can stem from a childhood notion that people with money are defective, greedy, untrustworthy, or unattractive. A variation on this life sentence is the idea that since I am "bad," I do not deserve abundance in life. These individuals go to court because they have lost money through a silly investment or have been unjustly fired, but they will inexplicably shoot themselves in the foot in front of a jury.

- **You didn't ask.** You have to pull teeth to get vital information out of this client. Issues remain unexpressed, objections are unstated, feelings and vital facts are buried. The resultant misunderstanding makes the client's relationships, including those with counsel, terribly unsatisfying. The fact that the client knows he or she should disclose everything has no impact. Even facts that would place the client in a better light and would generally help resolve the case are withheld.

Be aware that when a life sentence is driving a client's litigation, the client can "succeed" without actually winning at trial. Just bringing the litigation or having a deposition taken or telling a threadbare story or an oft-told lie to the jury is all the client really wants. Such cases are the hardest to handle. They are most easily spotted when you get the feeling that a client wants nothing so much as his or her day in court. As a professional, make sure your client's story resonates with you. If it does not, a life sentence may be lurking in the background, and the results will be quite disappointing. Remember as well that our duty to our clients is broader than the instant litigation; it also includes a duty to keep clients out of litigation. Being alert to life sentences can be a major tool in fulfilling that duty. ■



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