

**Messages Which Work:
Persuasion in Professional Liability Cases**

presented at the

National College of Advocacy's

**Holiday Golf Classic Seminar:
Professional Liability Issues**

**November 27, 1995
Pebble Beach, California**

by

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A. Ideational perspective

Whoever came up with the title for this topic, “Message Which Work,” perhaps was thinking of messages delivered to juries. However, the reasonable scope of the topic extends to more than trial strategies, themes, and arguments. It may be interpreted to include messages which work with defendants, lawyers, insurance companies, and judges. These messages, ones which get cases settled instead of tried, are the messages considered here.

Two medical professional liability cases, one banking liability case, and one insurance case will be addressed. The results in these cases reflect only anecdotal support for the means used to obtain the results. Nonetheless, analysis of these cases inductively suggests a measure of universal applicability.

B. Principals of delivering messages which get cases settled.

1. Prepare a detailed chronology from which to tell your story.
2. Tell your story clearly, factually, historically, and without editorializing.
3. Identify and clearly explain the factual and legal bases upon which your claims or defenses are based.
4. Fully document (and if necessary explain) your damage claims.
5. Don't be concerned about whether others do it the way you do it.
6. Don't be concerned about doing a lot of work on a project which might not produce results.

C. What is the message which works to get cases settled?

The message is not an overt one you deliver. It is an inference taken by your reader. A conclusion reached independently from the facts leads to a firm conviction, something most of us are unlikely to obtain from overt advocacy.

D. Illustrative examples.

1. Settlement on behalf of defendant physician who believes he or she did nothing wrong. See attachment 1.

2. Settlement by an insurance company in excess of its policy limit without a trial. See attachment 2.

3. Settlement by a bank covering money fraudulently obtained by a discharged employee off bank premises. See attachment 3.

4. Settlement in a medical claim as a result of an unanimous arbitration award. See attachment 4.

E. Attachments

1. Plaintiff's pretrial narrative statement in *Young v. Tri-State Neurosurgical Associates*.
2. Amended complaint for policyholder abuse in *Klein v. State Farm*.
3. Plaintiff's trial brief in *Legato v. Bank of Iaeger*.
4. Plaintiff's arbitration presentation and arbitrators' decision in *Stocking v. Three Rivers Orthopedics*.

Attachment 1

**Plaintiff's pretrial narrative statement in
*Young v. Tri-State Neurosurgical Associates***

Attachment 2

**Amended complaint for policyholder abuse in
*Klein v. State Farm***

Attachment 3

**Plaintiff's trial brief in
*Legato v. Bank of Iaeger***

Attachment 4

**Plaintiff's arbitration presentation and arbitrators' decision in
*Stocking v. Three Rivers Orthopedics***