

May 2009 Jury Tip: “Will jurors trust your client or your case?”

All things equal, jurors who identify with a litigant are more likely to trust them, give them the benefit of the doubt, and impose feelings about their own honesty onto the litigant. Doctors do tend to trust other doctors. Executives do tend to trust other corporations.

At the same time, all things equal, jurors who disagree with a litigant’s actions and approach to a given situation are more likely to blame that litigant for the harm done, whether the litigant is a plaintiff or defendant. Jurors who believe in routine preventative medical testing will usually fault doctors who don’t give routine breast exams when their patients’ sue for undiagnosed cancer. Jurors who believe in stringent human resource policies will usually fault companies who fire employees without documentation or written warnings.

So what happens when a juror identifies with a litigant but not with their approach? Will the benefit of the doubt overwhelm scrutiny of the litigant’s actions, or will the litigant’s different approach destroy their credibility in the juror’s eyes?

Will an amateur product inventor who has gone through all the proper steps to seek a formal patent identify with an alleged victim of patent piracy who did little to apply for their patent rights? Will a juror with law enforcement or prosecution experience—or who has close friends who are police officers or district attorneys—be receptive to a criminal prosecution if he/she expects to see direct evidence, and the prosecution has charged the defendant with only circumstantial evidence as support? Will a juror whose life was saved by doctors extend that same trust to a doctor being sued for medical malpractice?

The answer isn’t simple, but my own jury research suggests that the struggle between personal credibility and decisional credibility depends largely on the juror’s own outlook. To understand why some jurors trust the messenger while others trust only the message, we’ll need to revisit my discussion on the difference between ‘naïve jurors’ and ‘cynical jurors.’

Remember that a naïve juror is someone with an optimistic outlook of the world and the situations your case involves, usually because they have never had a negative experience and have trouble imagining the possibility of wrongdoing (hence the label ‘naïve’). Naïve jurors have never had a bad experience with a doctor, a construction contractor, an insurance company, a police officer, or an employer, and so their impressions of the litigants are overwhelmingly positive and trusting. The hallmark of a naïve juror is that all is right with the world, especially in the environment your case involves.

On the other hand, remember that a cynical juror is someone with a pessimistic, resigned outlook of the world and the environment of your case. They view the world as flawed and unfair but are rarely outraged. They don't trust doctors, contractors, police officers, or employers, but they expect others to be wary and don't necessarily blame those who they distrust.

Identifying naïve jurors is relatively easy to do; they tend to have overwhelmingly positive experiences and have no complaints to express. The surest way to identify cynical jurors is to notice those jurors who have negative impressions of your central case issues but minimize complaints or offer excuses. The key to distinguishing between naïve jurors and cynical jurors is to ask them general questions about trust, or specific questions about trusting doctors, lawyers, companies, police officers, or whomever your case involves. Naïve jurors will tell you that we should be able to trust others to keep our best interests and well-being in mind; cynical jurors will tell you that trusting someone else with your well-being is foolish and naïve and that a smart person should always look out for themselves.

Naïve, trusting jurors tend to put their trust in PEOPLE. If they identify with doctors, they'll likely give your doctor the benefit of the doubt. If they identify with employers, they'll likely distrust your employee in a wrongful termination case, even if they agree with most everything that your client did before and after being fired. On the other hand, cynical jurors lack the instinctive trust necessary to give others the benefit of the doubt and tend to put their trust in ACTIONS. They will agree with the litigant who did what they would have done. If they agree with the steps your corporate plaintiff took to protect themselves from unfair competition, they'll likely be receptive to your case. If they disagree with the way in which a murder investigation was conducted, they'll be likelier to distrust your prosecution case, even if they're a police cadet or are married to a highway patrol officer. Of course, there are many more factors at play in shaping how receptive a juror will be to your case, but knowing the focus of your jurors' trust is a good start. When a juror may have one reason to trust your client and another to distrust them, understanding the difference between naïve and cynical jurors is often the key to understanding how your jurors will make decisions about credibility.

Harry Plotkin is a jury consultant in Los Angeles but practices nationwide. Mr. Plotkin specializes in jury research, assisting trial attorneys in jury selection, and developing persuasive trial themes and opening statements. He can be reached at 626-975-4457 and at harry@yournextjury.com.