

April Jury Tip: “Educating your jurors during trial”

When your trial involves complex, technical issues—and most do—one of the great challenges involves educating your jury while, at the same time, persuading them about the merits of your case. Educating a jury is incredibly difficult for a number of reasons. Not only is your average juror a lay-person with less than a college education, but any juror who has formal training, education, or specialized knowledge in the subject matter will probably be removed in jury selection. The complex subjects you are asking the jurors to learn about—perhaps an incredibly complicated cancer surgery or how a jet airplane’s engine works—take years for experts to understand, and yet you are asking jurors to absorb and understand this information in a single lesson lasting a few hours, at most. And to make matters worse, even the experts who have spent years studying these subjects disagree with one another and give the jurors conflicting insights. It has often been said that an ideal opening statement should be clear and simple enough to be understood by an average seventh grader, yet most subjects in trial are far too advanced for middle school.

Despite these challenges, educating your jurors is critically important—at least for one side in every trial. If you need your jurors to criticize something (or someone), your jurors have to be able to understand it. Jurors rarely rely on experts when judging the actions of litigants and assigning fault.

Instead, jurors can only second-guess and blame a litigant if they fully understand what that litigant did and if that juror can form a strong opinion as to what he/she would have done differently in that same situation. This is precisely why jurors struggle to criticize doctors in medical malpractice cases but have far less difficulty awarding plaintiff’s verdicts in car crash cases. Unless they are properly educated, few jurors have a frame of reference for understanding the decisions and actions that doctors make, but almost every juror drives a car.

When the experts in a medical malpractice trial squabble about a surgeon’s negligence, most jurors have no way of judging the actions of surgeons. Most jurors have no way of knowing whether a particular surgical procedure chosen by a defendant physician was reckless or prudent, so it is far easier to jurors to give surgeons—who tend to have excellent reputations—the benefit of the doubt. Yet when jurors do understand the subject matter, they have no difficulty criticizing and second-guessing the actions of the litigants, sometimes mercilessly. In an auto accident case, almost every juror will have his or her own strong opinions about what each driver should have done in the situations involved.

Some jurors can be unreasonable, criticizing litigants for failing to take actions that the jurors themselves would NEVER have done. In mock trial deliberations, I have often seen jurors criticize injured plaintiffs for failing to inspect the brakes and engine of a

defective rental car. What matters is not whether or not these jurors would have actually taken these steps, but whether or not they think they would have. Voir dire is your only chance to learn how your jurors believe they would have approached a similar situation, so make sure to question your jurors about how they have approached similar or parallel situations.

Educating your jurors may be harmful to your case when you are in a defensive position. If your client, plaintiff or defendant, is under attack and you need your jurors to give your client the benefit of the doubt instead of second-guessing, don't be afraid to keep the subject matter complicated, technical, and mysterious. Remember that only one side will benefit from giving the jurors a clear understanding of complex subject matter, so it may not be your job—or in your best interest—to spend your valuable court time educating your jury.

On the other hand, if you are on the offensive and need your jurors to second-guess a negligent defendant's actions—or the actions of a plaintiff responsible for his/her own harms, in full or comparatively—you need to make the subject matter clear and understandable to your jurors. This is never an easy task when your case involves complicated issues, and I cannot offer a one-size fits-all answer for how to teach rocket science or brain surgery to a jury in a four-week trial. I will, though, leave you with some general tips.

First, accept that you will probably never succeed in fully educating your jury. Remember that it took you months of study and close interaction with your experts to educate yourself on these topics; your jurors don't have that luxury, so never assume that they will understand the concepts and technical terms that you are now familiar with. Knowing this, limit your focus to the relevant parts of the subject matter. In a product liability case, your jurors don't need to know how the entire product works, just the part that failed (or the part that plaintiff may have misused).

Second, don't be shy about using every-day analogies to simplify concepts and, even more importantly, to help jurors relate complex concepts to familiar concepts they understand and deal with regularly. Few jurors, for example, understand what is involved in a complex due diligence process, but most can grasp the idea and responsibilities involved when it is compared to inspecting and test-driving a used car.

Third, if you find that the subject matter is too complicated to explain to a jury, consider focusing your criticisms away from the technical issues and onto simple issues that jurors can easily relate to and understand. In a medical malpractice case, you may find it is next-to-impossible to get your jurors to understand a complex disease and why a particular treatment may be inappropriate. Rather than second-guessing a doctor on the medical issues, you may want to criticize the doctor on common sense. Did the doctor ignore obvious symptoms? Did the doctor move too slowly, treating an obvious emergency like a non-emergency situation? Did the doctor take too many risks when the situation wasn't an emergency? Jurors may not understand complex medicine, but they are very comfortable at understanding how to react to a crisis or solving a problem.

Fourth, never rely on the opinions of experts to educate and persuade a jury on complex issues. I am by no means suggesting that experts are useless. If an expert is capable of making complex subject matter simple and understandable to a jury, this is your most valuable expert. What I am advising against is relying on a brilliant expert's opinion to change the minds of your jurors. Speaking from experience, it simply doesn't happen often. When the subject matter is complex, jurors lack the tools and understanding necessary to judge the expert's accuracy. You may know that your expert is far more intelligent and has the sounder opinions than the opposing expert, but your jurors' won't be able to tell the difference. Next month's tip will focus on experts and how jurors react to them, but for the time being, realize that jurors can only criticize a litigant if they fully understand what he/she did wrong; spoon-feeding jurors expert opinions doesn't work.

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