

March Jury Tip: “Harnessing the Jurors’ Self-Interest”

Nothing is more persuasive than the force of self-interest. Eliciting sympathy from the jury for your client may be powerful, but getting your jurors to identify with your client and imagine themselves in the same situation is the most effective form of persuasion because it harnesses self-interest.

Jurors identify with litigants whose actions, motivations, and explanations match their own, because a juror can only imagine themselves in the shoes of a litigant who did exactly what they would have done in a given situation. If a juror agrees with every action and decision that a plaintiff made that led to a physical injury or financial disaster, that juror will identify (“that could have been me!”) and side with the plaintiff. The same goes for the defendant; if a juror agrees with the defendant’s actions and conduct, that juror will assume that the defendant did the right thing and is being sued unfairly.

On the other hand, should a juror question or disagree with a litigant’s actions, eliciting sympathy becomes problematic. The underlying principle in juror decision-making is that jurors assume that their decisions are always the right ones and that alternate decisions are usually the wrong ones. It is fairly common, and disastrous, for attorneys to overlook or underestimate this principle.

In many cases, litigants may have taken actions that are very different from those the jurors would take because many cases involve complex issues that are far different from “common sense.” Most jurors don’t understand the inner workings of complex industries such as business, finance, medicine, construction, and manufacturing, to name just a few.

⇒ Never assume that a juror will be open-minded enough to fairly evaluate your litigant’s way of making decisions and question their own decision-making; jurors rely on their limited scope of knowledge and a lot of “common sense.”

Trial is about constant juror scrutiny, and when jurors question or disagree with a litigant’s actions, most blame the litigant to some degree for the end result. If a plaintiff gets hurt in a car crash because the rental car was out of brake fluid, the juror who scrupulously gives his car a 20-point inspection every morning will blame the plaintiff for the accident because he would have caught the problem and avoided the accident. If a venture capitalist loses millions in an investment deal because of an unfair contract, the juror who reads every clause of every contract, lease, or waiver that she signs will blame the plaintiff for failing to do their due diligence. If a company defends itself against claims of compensation discrimination by arguing that its average male employee is more productive than its average female employee, the small-business owner on the jury panel who pays his employees according to tenure alone may view the company’s complicated compensation structure as flawed and potentially biased.

Just like in life, we tend to blame others for their misfortunes when they make poor decisions different from our own.

⇒ In your next trial, make it a top priority to get jurors on the same page as your client.

Think about the choices your client was faced with and the decisions and actions they chose, and carefully consider what your jurors think they would have done in your client's shoes. Think about the types of jurors who would agree or disagree with those actions and base your jury selection on this distinction. Once your jury panel is seated, think about how best to explain your client's actions to the jurors in a way that they can identify with. If your client's actions deviate from "common sense" and what the jurors are likely to identify with, acknowledge that your client took a different approach to what they might expect and tell them why this situation is different. Only by clearly and directly acknowledging your jurors' expectations can you challenge them to keep an open eye out for an unexpected situation, and an open mind.

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