



## The “Big 4” Questions

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The Jurors are only going to give your case so much mental energy. If you want to win, you have to give them a clear, simple explanation for why you are in court and why the plaintiff deserves money.

My advice to you is to focus on what I call the “Big 4” Questions. These may seem elementary, but I can’t tell you how many times I have talked to good lawyers who are months or years into their case and yet they struggle to give clear and simple answers to these questions. Embrace these and incorporate them into every part of your case.

### 1. What did the defendant do wrong?

Jurors don’t care how badly a plaintiff is injured unless they accept that those injuries are the result of behavior by the defendant that they judge is unacceptable. Tell them what the defendant did, using facts that jurors will judge to be morally wrong.

What did the defendant do?:

- “The Defendant was negligent.” No, that’s not a fact, that’s a conclusion.
- “The Defendant rear-ended the plaintiff.” Maybe, but that can happen (at least in the minds of many jurors) in the absence of negligence.
- “The Defendant drove so fast that when he needed to stop, he couldn’t.” Now you are getting there, but, better;
- “The Defendant chose to drive so fast that when the plaintiff did what everyone else did, and stopped for the traffic ahead, defendant couldn’t stop and ran into him.”

### 2. Why was what the defendant did wrong/who says it was wrong?

This question applies moral judgment to the facts.

#1 is, The defendant chose to drive at a certain speed;

#2 is “Why was it wrong to drive that speed?”

The answer to this has two components, internal validation and/or external validation. Internal validation is where the juror already believes that the defendant's behavior is wrong. You don't have to teach it; it is already in their heads (example - a driver must stop at a stop sign). This is the most powerful kind of validation; it is hard to change jurors' beliefs about what is right or wrong in a trial.

External validation comes from the testimony of others, usually experts, either (1) confirming that yes, what jurors think is the rule is the rule, or (2) explaining the rules for things that jurors don't know about (example - the standards for when a CAT scan should be taken when a person goes to the emergency department). Both kinds of validation must be credible and reasonable.

### **3. What was the alternative - what should the defendant have done?**

Always explain clearly and simply what better choices the defendant should have made. To be a winner, the alternative has to be something that was within the defendant's power to do and would have been easy to do. You want the jury to believe that what the defendant did was abnormal, while what the defendant should have done was the norm. Ideally, your alternative is something that a juror projects that they would have done if faced with that situation.

### **4. What difference did it make?**

This is proximate cause, without using those words. ("proximate cause" is the least-understood phrase in the jury instructions, and what jurors don't understand usually comes back to hurt the plaintiff).

Here is your chance to make a straight-line connection between the defendant's bad choices and the plaintiff's harms and losses. "If defendant hospital would have done the CT scan, they would have seen the plaintiff's brain was bleeding, and could have done surgery that has a 97% success rate." People abhor tragedy. Tell them how this could have turned out better, but for the bad choices of the defendant.

Work these questions and their answers into your opening, with both your witnesses and the defendants' and in closing/rebuttal. Keep it simple, repeat, and stay focused on liability and you will make life easier on you and on your jury.