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Why do Jurors Distort the Facts to Fit their Pre-Existing Beliefs?

People don't so much process evidence as filter it. They receive and judge everything by and through the fabric of their pre-existing beliefs. Current American politics prove this every day and are a powerful lesson in what you can and can't accomplish through advocacy. Medicare recipients, farmers, and blue-collar workers who work for companies that are dependent upon foreign trade, cling to the Presidential vote they made in November 2016, despite the overwhelming evidence that the policies espoused by the current administration hurt them. Likewise, people adhere to a moral code that denounces dishonesty, corruption, and adultery continue to support a person whose behavior is inconsistent with this code. Why?

People need to feel safe, and they need to feel secure. Beliefs are hard to change, and they are hard to change because the consequences of having a belief pulled out from under you is too great. In these divisive (scary) times, people "pick a side," even before they have all the evidence - and then stick with that side, regardless of what the evidence later reveals. They interpret "facts" in such a way as to make them feel safe and secure, even though those interpretations look crazy from an objective point of view.

No matter how skilled an advocate you are, you can only move a juror's

A recent focus group on a medical negligence case provided an example of this “doubling down” behavior. The evidence presented showed that the plaintiff had undergone two different surgeries. The first one went fine, the second one involved a serious deviation from the standard of care resulting in permanent harm to the patient. The jurors reviewed medical records and other materials and began their discussions. One juror in particular was obviously siding with the defense. When asked what facts made him feel more comfortable siding with the defense, he kept saying “I didn’t have a problem with the first or second surgery, but I’m suspicious of the fact that he had a third surgery. What was he thinking to have a third surgery?!!”

Let’s unpack this a bit. ***There was no third surgery!*** First, the juror was just grasping at straws to find something, anything, that would justify his pre-existing bias in favor of the defense (likely because he felt less threatened by sticking with the status quo and avoiding change -- AND make no mistake, a vote in favor of the plaintiff always results in “change”). Second, he was trying to point to a fact that would justify victim blaming “if only the plaintiff hadn’t had that third surgery . . .” This “fact” that the juror grasped onto didn’t even exist. No piece of paper, medical record, or other evidence or information ever suggested that the plaintiff had three surgeries.

Not wanting to call out the juror or make him uncomfortable, I asked him what piece of information he was relying on for the conclusion that there were three surgeries. He couldn’t point to anything but stuck to his position. I asked the other jurors “what do you think about the suggestion that a third surgery was the problem?” Most jurors were fairly quiet about it and didn’t offer much, BUT not one of the jurors ever said “there was no third surgery.” In other words, no one wanted to take the uncomfortable step of directly disagreeing with another juror.

Finally, I pointed to the medical records and showed the juror that there were, in fact, only two surgeries, not three. For a while, he persisted in speaking about “the third surgery” until the point where the other jurors finally started saying “there was no third surgery.” When the group deliberated, he still voted for the defense, even though he no longer had a

This is a stark, but not unusual, example of what happens far too often in the jury room. A juror with a bias against plaintiffs looks for something, anything, to justify a vote against your client - even if the fact or evidence they rely upon doesn't exist. And the other jurors don't have a firm enough grasp on the facts or aren't sufficiently engaged in your case to point out the error in the assumption. And before you know it, you have a defense verdict.

So, what do you do if jurors are inclined to distort the facts to fit their pre-existing beliefs? The most important thing to remember is Simple = Strong. The simpler and clearer you make your case, the less likely you will be to lose so many jurors *and* the more likely that some of the jurors will be able to follow the evidence and correct the jurors who are mistaken.

Admittedly, wrapping your arms around the evidence, case theories, parties, themes, and experts is a daunting task. How do you distill something you've worked years on into a clear, concise, and convincing case? Here are a few suggestions:

- Dismiss defendants who aren't essential
- Dismiss plaintiffs who aren't essential
- Don't use experts who don't testify consistent with *your* trial theme
- Make sure your demonstrative exhibits are simple and clear and only convey one concept for each exhibit
- Jettison theories and claims that aren't necessary
- Streamline your case so that you can try it in the shortest time possible
- Define all words that aren't used in ordinary, everyday conversation among non-lawyers

Of course, one of the best ways to test whether your case is strong enough to withstand jury bias and confusion is to test your case at a focus group. See what jurors think about your themes, evidence, experts, demonstrative exhibits, and plaintiffs and see whether you've distilled it into a case that it engages the jurors to do justice for your client.

I don't know if America is becoming more polarized, or it is just becoming



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