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BTC Blast | December 2018 | Jeff Boyd, Esq.

Will I Be Better Off If The Plaintiff Wins Or The Defendant Wins?

Among the big-picture lessons I have learned from 20+ years of conducting focus groups is the importance of a juror's self-interest in the consequences of their verdict.

We can't ignore the fact that this question is running through jurors' minds from the moment the trial begins: **"Will it be better for me if the plaintiff wins or will it be better for me if the defendant wins?"**

This is most easily illustrated in the dynamics of a medical negligence case. Many jurors believe (mistakenly) that the existence of medical negligence cases dramatically increases the cost of *their* medical care. On the other hand, many jurors understand that holding negligent providers accountable *should* increase the quality of the medical care *they* receive.

The issue, then, is what is the *better* option for that juror? You must frame your case to reinforce the pro-plaintiff better and to overcome the anti-plaintiff better.

We can start to see what better looks like by considering what jurors identify as *legitimate* medical negligence cases. In focus groups, four legitimate cases always come up: *cutting off the wrong leg, leaving an instrument inside during*

- Jurors understand these facts to be bad without any additional education
- The harm is obvious and there are no proximate cause issues
- These cases threaten the juror because it could happen to them

Jurors are okay with voting for the plaintiff in these cases because that vote makes them feel *they* will be better off because of their verdict. The reward to them of voting with the plaintiff outweighs the perceived cost of voting against the plaintiff. The juror has to fear that if they don't vote for the plaintiff, the conduct will happen again, and that they or someone they love will be harmed.

PRO-PLAINTIFF: Jurors feel better voting for the plaintiff when they believe their vote:

- Helps someone in need
- Sends a message that things need to change
- Makes the world safer for themselves
- Makes the world safer for others
- Rights a wrong
- Punishes a defendant who deserves to be punished
- Helps this plaintiff or their lawyer, whom they have come to like during the trial
- Applies the law to the facts *as I saw them*; being a good juror and a good citizen

ANTI-PLAINTIFF: Jurors feel better voting for the defendant when they believe their vote:

- Protects the defendant (and themselves) from frivolous lawsuits
- Supports the individual defendant or their lawyer, whom they have come to like during the trial
- Supports the juror's brand they like and support, for example, a local business that has been sued
- Keeps a lid on their own costs (e.g. cost of medical services, or taxes, if it is a tax-funded defendant)
- Punishes a lawyer, or a plaintiff, they didn't like or didn't deem worthy of their vote, for reasons directly related to the claim (it was the plaintiff's fault) or unrelated to the claim (any type of prejudice against the plaintiff)
- Draws a line in the moral sand: people who sue are bad

- Affirms that we live in a world where *stuff happens, or things happen for a reason*
- Applies the law to the facts *as I saw them*; being a good juror and a good citizen



Try your case so that your jurors will be able to fill in the ending to this statement (without you actually saying it): "Ms./Mr. Juror, you will be better off if the Plaintiff wins this case because _____."

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