

WHAT TO DO, WHAT NOT TO DO FOR BIG JURY AWARDS

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Tip No. 1: *For a good jury award, you first need a good jury.*

From the initial client meeting and throughout representation, decisions should factor in the potential impact on the jury and any other possible ripple effects. Even as early as the initial client meeting or the consultation, you have to be thinking of what a jury will think of each and every aspect of the case. Decisions made now may affect the jury later.

A few considerations:

- One of the first major decisions that will impact the size of the jury award is venue.
 - Who are the potential jurors?
 - State court vs. federal court
 - State court – residents within a county
 - Plaintiff-friendly county?
 - Economic make-up
 - Disposition towards/against protected classes
 - Federal court – statewide
 - Potential differences within Rules of Evidence
 - State court vs. federal court – different rules of evidence may mean evidence is presented differently, or some evidence may be admissible in one and not the other
 - Removal to federal court/ remand to state court?
 - Judges in a particular county/ federal court may impact what can be presented to a jury, and how it can be presented
 - Availability of technology/ resources of court

Tip No. 2: *Every decision should be made after considering impact on a jury.*

Throughout the litigation, countless decisions are made for a variety of reasons. A factor to always consider is any impact today's decision may have on a jury months/years from now. Laying the groundwork for a jury now arms you with the tools you will need during trial.

A few considerations:

- The jury considers factual evidence, which can be developed during discovery.
 - What evidence will you need to prove the case?
 - Get the most bang for every buck of evidence
 - Simplify, simplify, simplify!!!!
 - The clearer the evidence is, the easier it is to understand. And, if it's easily understandable, it's also easily believable.
 - Less is more.
 - A picture is worth a thousand words!
 - Pictures, graphs, videos, recreations – all can engage the jury, and each can be more effective than testimony
 - Depositions
 - Videotape: Certain witnesses can make or break a case. Videotape witnesses that you know can break your adversary's case, and then play the tape for the jury.
- The parties' conduct may become evidence – act like it!
 - New era: proactively manage social networks, which may be discoverable, and may be admissible evidence
 - I.e., Facebook, LinkedIn, Twitter posts commenting about the case or the other party

Tip No. 3: *Don't just select A jury, select YOUR jury.*

Jury selection allows you to pick the specific people that you want on your jury, although if you have not been working with a jury in mind prior to this stage nothing will save you now. More so than picking your jury, this stage becomes your opportunity to plant seeds in the minds of your potential juror that you will exploit during trial. And, to some degree, this stage allows you to strike a few terrible jurors.

A few considerations:

- Voir dire is an opportunity to lay some groundwork.
 - Questions that make a juror think, reflect, then provide an insightful answer allow you to learn a little about a juror.
 - The same questions can get a juror to start thinking the way you will want them to view your case.
 - For example:
 - Questions that ask a juror to reflect before answering – "Some people think *X*, other people think *Y*. With which group are you more likely to agree?"

- Let's the juror think about the options, identify with one or the other based on personal analysis/reflection, and let you know their position.
 - Better than: "Do you think *X*?"
- Some courts have started allowing trial lawyers to search the Internet during jury selection
 - Check Google, Facebook, LinkedIn, MySpace, YouTube, Twitter – whatever you can
 - The more you know, the better

Tip No. 4: *Keep the evidence simple, but milk it for what it's worth.*

Each brick in your wall of evidence must have a specific purpose. There should be no holes in your wall—no gaps in evidence—and there should likewise be no extra bricks—do not introduce evidence for the sake of introducing evidence.

Maximize the effect of each fact, each document, each exhibit, and each witness. Any item may have multiple purposes. Every item should be explained in the simplest terms possible and made to fit neatly into the brick wall you are building.

A few considerations:

- When discussing evidence, make your words come alive. Using highly descriptive language to describe facts allows the jury to relate without asking them to.
 - Highly descriptive language also works to keep jurors' minds engaged.
 - Use words that play on the 5 senses: seeing, hearing, touching, smelling, tasting
 - A red car vs. cherry-red Porsche?
 - A verbal picture can save you 1,000 words
 - Compare:
 - "He looked at me and it made me feel uncomfortable,."
 - "He looked at me like a hungry dog looks at a piece of meat as he undressed me with his eyes. I felt disgusting, like every inch of my skin was covered in slime."
- Break down numbers to highlight how long, short, much, little the amount is
 - When dealing with numbers, you can easily twist the presentation to send a certain message
 - Think sales: is the Ab Roller \$100, or is it just 5 easy payments of \$19.99
 - Same principle applies:
 - Being out of work for one year is not as bad as 12 months, but at least it's not 52 weeks, and thankfully not 365 days.

- Which would you prefer?
 - A job for \$10 an hour, or a job making a salary of \$20,800 a year?
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- Some cases turn on the timing of facts: show the jury the timeline
 - Compare:
 - "The employee was fired the week after he testified against the employer."
 - "John testified on Thursday. He went into work on Friday and noticed that his supervisor avoided eye-contact and acted coldly towards him. Saturday and Sunday, John was home and had an uneasy feeling about the coming workweek. Monday, two business days later, he was fired."
 - This works well with a diagram
 - Plus, the diagram can stay up as a reminder to the jury while you continue on with the story – bonus!!

Tip No. 5: *Parade the evils – strike at the jury's basic instincts and emotions.*

Juries love a good story. Juries also love a good storyteller. You are not a clown. You are not there to entertain.

Speak to people's basic instincts and emotions. Need for safety. Fear. Anger. Jealousy. Love. Pleasure. Hate.

A few considerations:

- As appropriate for your case, elicit a "gut" reaction based on human nature and basic instincts. This transcends educational levels, logic, predispositions—everything.
- Examples:
 - If you make the defendant a real threat to each juror, their need for safety triggers a response.
 - Think products liability or criminal cases.
 - The facts of your case may show that your plaintiff acted out of fear. Jurors understand fear. Jurors feel fear. Jurors relate without being told to. Fear triggers a response.
 - Think some harassment cases.
 - Make the jury angry at the defendant. Angry jurors may act out of spite, may want to punish the defendant, or may just lash out.
 - Think products liability or perhaps mass tort cases.
 - Jealousy... Love... Pleasure... Hate... all relatable, all basic instincts and emotions, all capture the jury's attention

Tip No. 6: *Jury Participation*

It is no secret that jurors get tired, lose focus, lose interest, and zone out. Consider employing techniques and mechanisms that call for jury participation.

A few considerations:

- Local rules may allow for jurors to submit questions to the judge to be asked of the witness on the stand after counsel have finished. This will keep the jurors engaged, may telegraph the jury's leanings, and may elicit testimony that is extremely helpful to your case.
 - It can be a double-edged sword. But, go big or go home!

Tip No. 7: *YOU instruct your jury.*

The judge needs to use as much language favorable to you as possible. The law should be phrased as favorably to you as possible, but ultimately do whatever you have to so that your words are used. Craft your instructions carefully to lead your jury to the result you want.

Above all, keep the instructions simple. The jurors have probably made their basic instinct judgments already. If you presented your case to capture those instincts, not give them instructions that are as simple as possible to make their brain's result match their emotional reaction.

Tip No. 8: *Do not bifurcate your trial.*

Bifurcating your trial clearly cuts against you. The jurors first determine liability, then damages. This splits the trial into two phases, and means that the evidence is never presented in its entirety. This cuts against liability, and against damages.

Tip No. 9: *You know your case, so you make the decision.*

Conventional wisdom, tips, pointers, and any other advice or instruction you can get from various sources can be very general in applicability. It does not always apply. You know your case. Use your brain. If something does not make sense for this particular case, for this particular client, for this particular reason, then it does not make sense. Period.

Ultimately, your mission is to win, not to just go through the motions.

Most important: *The jury is deciding the case based on YOUR presentation. Everything about you must instill confidence, elicit trust, and command a result in your favor.*

Jurors make judgments. About everything. Sometimes more so than any other piece of physical evidence or testimony, jurors will decide the case based solely on their impression of the lawyers. It is what it is. It happens more often than some people think or care to admit.

So, every detail about you must command a verdict in your favor. Something as simple as unshined shoes or mismatched socks can be more damaging to your case than your adversary's smoking gun.

Show the jury you are a winner, and they will treat you like one.