

Juror Research: Lessons From Focus Groups & Trial Simulations—Physician and Hospital Negligence

The Case: A lawsuit was filed by a plaintiff who claimed he suffered brain damage due to lack of oxygen while in a condition of shock after an animal bite. The plaintiff contends that medical malpractice on the part of the attending physician and the hospital staff resulted in his brain damage.

An animal bit the plaintiff. The plaintiff was self-transported to a hospital emergency room, where he presented without symptoms. He was put in one of the rooms of the emergency department and placed under observation. After approximately 30 or 40 minutes, the plaintiff began to have some swelling of the tongue and numbness about the mouth. The patient very quickly went into anaphylactic shock and was treated with epinephrine. The patient was infused with oxygen by bagging and several attempts were made to intubate him. Ultimately, a crit was conducted and a tube placed into the airway. The plaintiff was ultimately stabilized and transported by helicopter to a trauma center. Severe brain damage due to lack of oxygen had occurred. At one point, prior to transport, the subject went into full cardiac arrest. Several explanations for the lack of oxygen are possible, including those related to bagging, intubation, and an inability of the lungs to absorb oxygen.

The Research Design: This research was designed using a trial simulation format in which most witnesses were presented by videotapes of portions of their depositions. Surrogate jurors were allowed to examine hospital records and charts. Additionally, attorneys represented both the plaintiff and defendant sides of the case via opening statements with argument. Lastly, the emergency room physician and several of the attending nurses were subjected to a live direct examination and cross-examination in front of the panels of jurors.

Case Findings: Focus group research showed that the plaintiff in this case was of borderline intelligence and probably caused his own injury by not walking away from a dangerous animal when he had the opportunity. The jurors were found to be very sympathetic towards the plaintiff and a Freudian word-association disclosed that most jurors wished to protect him and provide for him. It was apparent early on that the jurors were going to be inclined to find a way to award this patient some level of damages.

The attending physician in this case was very well liked by all the jurors. On a Likert scale examination of one to five, he was scaled an average of 4.5 across the board. He was young, attractive, fit, articulate, and highly knowledgeable in his field. He was an exceptionally well-qualified witness who presented himself well. Jurors found absolutely nothing wrong with the care he provided once he was told that this patient had gone into shock.

The average Likert examination for the nursing staff was approximately 3.0. These nurses were neither high nor low; they were simply rated as average. Based upon the actual science of the case, there appears to be little doubt about the actions of the nurses. They followed a standard operating procedure, kept the patient under observation, and notified the physician at the first sign of trouble. However, the jurors used them as a vehicle to award damages. The jurors in this case believed that the patient should have been watched more closely during the first thirty minutes, and if he had been, the doctor would have been more promptly notified and the emergency never would have developed.

This trial simulation protected the defendants from being completely blindsided by trial jury activity. This focus group revealed that jurors feel the need to take care of, and compensate, the plaintiff in this case. They felt great empathy toward him and felt a moral obligation to see that he was cared for. This moral obligation is often in conflict with the other moral obligation to be fair to all sides. The jurors were unconsciously motivated to find a reason to award damages. Up until the research was conducted, the defense had concerned themselves primarily with their actions once the patient began to go into shock. It had not occurred to them that the jury would find fault with the observation techniques that were used. With this new information, the defense is now able to make allowances to explain to the trial jury exactly why the nurses' behavior during the observation period was appropriate and not below the standard of care.

The Applicable Findings:

1. Juries will often revert to their unconscious need to help people who need assistance. When the primary target (physician) is both likeable and not liable, jurors will search for a secondary target.
2. Secondary targets must be defended for the period of time prior to the physician's intervention and also for any non-compliance with the physician's orders.
3. When possible, the jury should be made to understand that the patient was fortunate to have survived the incident.
4. Jurors must learn that not all bad outcomes are malpractice.
5. Whenever you have a sympathetic plaintiff, great attention should be paid to any possibility of error on the part of the defendants.