

What the Jury Doesn't Get to Hear

The evidence rules have a big impact on what the jury gets to hear (and what it doesn't get to hear). Evidence can seem a lot like an iceberg: 10 percent visible, 90 percent below the surface.

A lot of the evidence rules are counter-intuitive. Here's what the jury doesn't get to hear in a personal injury case:

1. The amount defendant offered to pay before trial. In most cases defendants make offers before trial. But at trial the jury never hears what the defendant was willing to pay and the defendant's last offer does not set a floor for the verdict.

2. The defendant has insurance. At trial defense lawyers love to insinuate that their clients are going to have to pay the full amount of the verdict. Nothing could be further from the truth. But the jury never gets to hear that the defendant has insurance and the insurance company will pay the full amount of the verdict.

3. When the defendant admitted fault. There are a lot of cases where defendants deny that they were at fault from the day of the wreck all the way up to the night before trial. Then, almost magically, they admit fault on the courthouse steps. The jury never gets to hear that the earnest, accountable defendant denied that they caused the wreck for years only to change their tune the first day of trial to try to obtain a tactical advantage.

4. The defendant caused 10 other wrecks. A lot of clients really want the jury to hear that the defendant caused 10 other wrecks and is a menace to society. The rules of evidence don't allow the jury to hear about these kinds of "past bad acts."

5. The defendant was drunk, high or texting. This is probably the most emotionally-charged. Most judges take the view that if the defendant admits he was at-fault for the wreck, the jury doesn't find out that he was drunk or stoned.

6. The defendant was cited (or the injured person was not cited). Evidence about whether a citation was issued (or not issued) doesn't come into evidence—the jury never hears about it.

7. The defendant never checked on the injured person or asked what they could do to help. What's the best way to truly accept responsibility for hurting someone else? To try to make things right. But the jury is never going to hear the defendant never checked on

the injured person, never offered to drive them to the doctor, never offered to pay for their medical bills, etc.

8. What other, similar, cases are worth. The jurors are basically appraisers. Their job is to figure out what the injured person's loss of the ability to be pain free, to exercise, to pick up their grandkids, etc. is worth. But the jury is never going to hear that in a very similar case the jury awarded \$1.45M. It's a little like an appraiser potentially saying a house is worth \$100,000 when the ones on either side sold for \$1.55M and \$1.4M.

9. Argument that the jury should put themselves in the shoes of the injured person. How do we typically "understand" things that happen to other people? How do we "empathize" with other people? We put ourselves in the other person's shoes. Unfortunately, the judge will not allow the attorney for the injured person to encourage the jury to use this common sense way of understand what happened to the injured person.

10. Where the money goes after the verdict is paid. The jury is never told that the injured person has to pay back their insurance companies. And that the injured person has to pay both their attorney's fees and costs. The jury is never told that in the United States that we do not have a "loser-pays" system and that even though defendant forced the injured person to go to trial, the defendant does not have to absorb the injured person's fees and costs (which can be over half of the amount of the verdict).

These rules may not seem fair. But it's important to know about them.

Before trial the judge will enter what's called an order in limine. It lays out what topics are off limits. If either side violates that order, the judge can declare a mistrial.



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