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# Flea

One Pediatrician's Perspective

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Thursday, April 26, 2007

## What Do Malpractice Juries Care About?



More notes from Flea's day with his trial-prep advisor:

Question: Besides the defendant, what other party is present in the courtroom completely against their will?

Answer: The jury.

Juries, Flea is told, [sympathize more with the flea in the box than you might guess](#). Jurors, like physician-defendants, tend to feel anxious and unsure of themselves, at least initially.

All that was nice and reassuring. What Flea heard next, however, fairly blew him away.

A jury's decision-making process depends more on the doctor's character, or what they perceive the doctor's character to be, than on the medical facts of the case. The break-down was astonishing: Doctor's character accounts for 97% of a jury's decision, the medical facts of the case, 3%.

Did y'all get that? The facts of the case amount to roughly squat. What really matters is the impression Flea will make on the jury.

Regarding the doctor's character, a juror asks himself the following questions:

1. **Can I trust this doctor?** The advisor told Flea that a lot of his trustworthiness has less to do with the words that come out of his mouth and more to do with the shape of his face. She told Flea he has a "compassionate face", according to some arcane biometrics. All good so far. The effectiveness of Flea's presentation at trial is 80% visual and 15% non-verbal communication (body-language, etc.) Very little of the trust factor comes from the content of the medical decision-making the jury will learn about.

2. **If I was in a medical crisis, would I be in safe hands with him?** This question breaks down further into two more bits: What are the doctor's credentials, and does he appear to have good judgment? The former counts for about 25%, the latter for about 75%. Flea hasn't mentioned his embarrassingly flashy CV, but he has worried that it might come back to bite him in the context of a malpractice trial ("Doctor, you have all this Ivy League parchment hanging on your wall and yet you acted like a dumb-ass pre-med, did you not?") Fortunately, the CV doesn't matter as much as we had worried.

And most important:

3. **Under the circumstances, did Flea do the best he could?** This will not be difficult to demonstrate at trial.

Finally,

4. **Did Flea make the proper medical decision?** This is the bit that amounts to only 3% of a jury's decision-making process.

The plaintiff's attorney's job, then, is to destroy Flea's character. Flea's job is to preserve it.

We've said it before and we'll say it again: if the basis of this case is that Flea is an arrogant, uncaring jerk who maliciously neglected a patient, resulting in his death, the plaintiff will not win, *period*. As much of a cocky bastard that Flea may appear in the blogosphere, the readers who have a personal acquaintance with the real 3-D doctor understand how such an approach cannot succeed.

The only tack that has a prayer of prevailing is to prove to the jury that the doctor is [a drooling, blithering idiot](#).

Flea's only remaining fear is that the (female) plaintiff's attorney will be mean to him.

Posted by Flea at 7:45 AM

Labels: malpractice

22 comments:

Anonymous said...

Is your trial prep advisor a lawyer? I'm guessing not, because the lawyer knows the evidence matters a lot more.

[Thu Apr 26, 09:27:00 AM EDT](#)

Anonymous said...

*Flea's only remaining fear is that the (female) plaintiff's attorney will be mean to him.*

That would be a poor tactic, as it would make the jury sympathize with you more than they otherwise would.

Also, don't believe for a second that the facts only count for 3%.

--ET

[Thu Apr 26, 09:30:00 AM EDT](#)

[Flea](#) said...

Anon and Eric,

She's a lawyer, she advises med mal defendants for a living, and she has a proprietary dataset with over 10,000 juror interviews.

How much research have you folks done?

I appreciate your kind efforts, but I'll defer to the lady who's being paid to give advice (did I mention the large dataset?)

Flea

[Thu Apr 26, 09:38:00 AM EDT](#)

DR. MARY JOHNSON said

### About Me



Flea

Flea is a pediatrician in solo practice in the Northeast U.S.

[View my complete profile](#)

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2007 6

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SSSSHHHH!!!!!!

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QED

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