

## Jurors Recognize Judicial Bias at Trial

by Patrice Truman, Esq.  
Jury and Trial Consultant

*"Four things belong to a judge:  
To hear courteously, to answer wisely,  
to consider soberly and to decide impartially."*

Socrates,  
470-399 B.C.

For counsel, it can be unnerving to have the trial judge quietly seething with annoyance and hostility as counsel presents evidence to the jury. Absent any antics by counsel that may prompt judicial bias, undue impatience and uncalled for harshness may occur because of the judge's dislike of counsel, counsel's case, or the length of the trial and its consequences to his docket to name a few reasons. At a jury trial, the critical issue focuses on what jurors' sense from the body language, gestures, rulings, and discourtesies directed to counsel from the bench.

For those judges who cannot mask their sympathies, mood and attitudes, the jurors take notice. Sometimes jurors are savvy enough to suspect judicial bias. Other times, they are subconsciously influenced, and the verdict mirrors the bias.

At what point do jurors differentiate between what appears to be proper judicial authority and what resembles judicial bias and arrogance? This newsletter discusses what jurors discern from the bench and how judicial behavior affects their processing of the evidence. Post trial interviews provide the insight for the infrequent occurrences when the judge acts beyond his discretion, *In Jurors' Own Words*.

### The Imposing Power of the Bench

Jurors perceive the judge to be the imposing presence, power and authority in the courtroom. Therefore, when the judge appears to overstep his bounds of authority and acts with severity and obvious partiality then jurors find it troubling; the judge fails to comply with their image of what the judge should represent in terms of fairness and temperance. While some jurors may look to the judge in seeking a clue as to the importance of certain evidence, they typically do not expect to observe deliberate indications of judicial bias.

While jurors may expect and excuse some shenanigans from the competing advocates, they hold the bench in the highest regard. Even without evident bias, certain judicial actions can debase and appear to deprive litigants of their opportunity for justice.

*"He was walking a thin line. He was not biased, but I thought that he was officious."* Sonoma County male juror

Indeed, with either the perception of improper subtleties from the judge, or blatant actions favoring one side, jurors admit that they find bias and the abuse of power disconcerting.

*"I am concerned about how much power judges have to decide civil cases even when a jury is involved. My impression is that in a civil case, the judge can decide the case however he wants regardless of what the jury decides. If that's the case, then a civil trial is really a trial by judge, not a trial by jury. So let's not waste a jury's time maintaining a pretense that it is."* Contra Costa County male juror

Accordingly, jurors hold statements from the bench with more weight and typically less scrutiny than anything that the lawyers say in argument.

*"The judge seemed to favor defendants but it was not glaring. I got that impression. The judge made it clear that the burden was on plaintiff and said that it was very high and that is why the jury said there was not a paper trail to lock it in for plaintiffs."* San Francisco County male juror

### Bias Impairing Counsel's Examination of Witnesses

Jurors often keep a tally of the rulings from the bench when they suspect some momentum of judicial prejudice emerging during trial. They focus on the number of favorable rulings that the judge renders to one side, in lopsided proportion to her rulings toward the opposition.

Accordingly, jurors seem to understand the difference between a circumspect judicial approach contrasted with a myopic one. When impartiality seems violated, jurors will ignore the admonishments given to them during trial and discuss their impressions of the judge's austerity. Therefore, if they discuss the judge's behavior on trial breaks, most likely it impacts their deliberations also.

*"She sustained a lot of objections made by the defense but overruled a lot made by [plaintiff's lawyer]. I said that to the other jurors and they agreed."* Sacramento County female juror

Jurors express frustration when the evidence appears to be impeded by both the judge and opposing counsel seemingly acting in conjunction with each other. The barrage of endless objections and rulings favoring the objecting attorney cause jurors to be skeptical about the balance of evidence unfolding before them. Given this dynamic, jurors interpret opposing counsel's numerous objections as being purposefully disruptive, concealing potentially significant evidence, or reflecting insecurity about the strength of the opposition's evidence.

*"The judge was blocking [defense counsel]. He should have had the opportunity to complete his questions. And, the other lawyer was objecting. With some of the questions, [defense counsel] was trying to get a positive answer out of them. But, the judge was not letting him go into the questions. [Defense counsel] was trying to get them to answer in certain areas. So the witnesses never really got a chance to answer some important questions that I wanted answered."* Los Angeles County male juror

Jurors are drawn to the attorney who they perceive as being more trustworthy, organized, and efficient with the presentation of evidence. Hence, they feel frustrated and stymied in their task of evaluating the evidence when the judge appears to impair witness examination by demonstrating partiality for or against a party. By contrast, jurors recognize when the judge justifiably exerts necessary control and authority over counsel who may be annoying. But, absent any antics, when the judge sets narrow bounds during examination, then jurors appreciate that the proceedings and ultimate outcome can become compromised.

*"The judge made it seem like [defense counsel] was confusing it between the plaintiff and defense case. He said that he didn't want the jury confused. But the judge was sometimes confused himself because of the way that they were talking and explaining and not getting into the details... The judge seemed to favor plaintiff's side."* Los Angeles County female juror

### Reacting to the Judge

Every experienced trial lawyer knows the long-standing adage: Lose your temper, you lose the case. Consequently, when counsel faces an incorrigible situation of judicial bias, she faces a dilemma: Take the risk, and address the imbalance to the judge and opposing counsel out of the presence of the jury or tough it out and make and protect the record for an appeal. After all, jurors often ally with the underdog when the competitive arena seems unfairly skewed.

Regardless of counsel's tactic in dealing with the bias, at all times, counsel must maintain patience, civility, and a determined spirit when the jury is present.

Notably, a dicey approach might be the one taken by a Beverly Hills attorney who may or may not have been reigned in unfairly on several occasions by the female judge in Los Angeles. He confronted her after the jury departed at the end of a trial day with the following pronouncement: *"In all candor judge, you are getting under my skin."*

### Conclusion

Jurors are astute observers of the courtroom environment. They figure out that while the judge symbolizes the umpire in the courtroom, often umpires can make bad and unfair calls. Hence, when a judge behaves indiscreetly with inappropriate statements, rulings or actions then some juries seek to arrive at a just ruling with what evidence that they have before them, along with their application of common sense.

Although more rare than common, egregious judicial behavior only serves to galvanize intelligent and independent thinking jurors to insure a fair outcome. Unbeknownst to most jurors, but of some consolation to counsel whose case is the target of the bias, judges do not like being reversed by the appellate court. Alas, for most judges the appellate courts may provide some impetus for them to keep in check their considerable discretion and perspective on cases before them.

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