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# Terrorism and The Civil Jury: The Role of Ego Trauma In Juror Decision-Making

by John D. Gilleland, Ph.D.

While on the way to a jury selection on the East Coast, the trial team heard the first reports of an airplane hitting the World Trade Center. Although initially suspecting it was probably a small plane, and maybe even a random accident, the team slowly learned the truth from the court's TIP staff. Multiple large planes and multiple targets – America was under attack from terrorists.

As court staffers broke down in tears and people with loved ones potentially in harm's way scurried for phones, attention necessarily shifted back to the task of selecting a jury – what impact would this have on the jury selection process later that morning?

Should there be voir dire over the impact of the events on jurors' lives? What questions should be asked of jurors? What kinds of jurors should the defense watch out for in terms of the many possible reactions to the terrorist attacks?

These questions, and these events, touch on a core process that partially drives human behavior – a process psychologists often refer to as ego trauma.

## Ego Trauma

Simply put, ego trauma is thought to occur when an individual suffers a blow to his or her sense of "self." The term is used to describe reactions to a variety of life events that cause:

- ✓ a blow to one's self-esteem
- ✓ a state of questioning one's self-worth
- ✓ feelings of vulnerability due to some event
- ✓ questioning of one's values
- ✓ introspection into one's weaknesses

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As the term suggests, people undergo ego trauma regularly in response to common events such as the death of a loved one, the loss of a job, working at a job one perceives to be below one's station – just about any type of unusual but naturally occurring trouble in one's life. And of course, it also occurs as a reaction to unnatural tragedy.

## Ego Trauma In the Jury Pool

How might this phenomenon impact the reactions of jurors to civil disputes? What happens to juror decision-making when it occurs while emotions are running so close to the surface? Of course, the immediate emotions stemming from traumatic events fade with time, but what of those juries being selected when the wounds are still fresh?

Lawyers need to look carefully at the impact that tragedy may have on individual jurors. At a minimum, it would seem that the court and counsel need to address:

1. Whether the potential juror was personally and specifically touched by the events – did they have a relative, loved one, or close friend who was actually involved in the tragedy?

For example, one of the lawyers in our jury selection had a close friend whose three adult children worked in the World Trade Center. The attorney and his wife were obviously worried about these friends, and were quite distraught with the thoughts of what might have happened to these people they had grown up with and to whom they had become close over the years.

2. Whether the potential juror was generally affected by the events – do they have a relative, loved one, or close friend who was peripherally touched by the tragedy and who was (and may still be) in need of comfort?

An example here might be the considerable time and energy needed to explain such events to young children – exacerbating one's own sense of grief and emphasizing the need to teach about compassion and giving in such troubled times.

3. And finally, discovering whether the potential juror feels so overwrought with emotion that they would have trouble focusing on the trial and the evidence.

Only by asking jurors what they feel and how they are coping will the court system have any hope of ferreting out those who should not be asked to serve as jurors at this point in their lives.

## Ego Trauma and Jury Decision-Making

Of course, the court system is not always amenable to extending the voir dire process. Judges are unlikely to want to take individual questioning to a new level over these issues, but in the immediate wake of major traumatic events, trial teams should push hard for either a supplemental juror questionnaire or individual questioning as a way of effectively teasing out who might be affected by ego trauma.

And that is because jurors suffering from ego trauma view the world with a different eye, and only by delving into the events causing the trauma can the lawyers and the court hope to identify those who are currently too fragile to serve as jurors. Again, it is not just whether the individual states they are too fragile, because the impact of ego trauma on behavior typically is an unconscious reaction.

Traditional wisdom in the trial consulting field is that jurors suffering from ego trauma tend to be much more pro-plaintiff than they might be in the absence of such trauma. Although it is difficult to stereotype any jury-selection characteristic to all jurors, surely in cases involving a single plaintiff against a corporation, one can see how consultants believe the juror suffering a form of ego trauma might be pro-plaintiff.

For example, this type of juror may be too forgiving of the plaintiff's own role in causing his injury or mitigating his damage. It is possible such a juror may more easily conclude that "somebody" has to compensate this plaintiff, even though the responsibility for the injury rightfully belongs to someone other than the defendant. Or this juror may be feeling "put upon" by society and circumstance, and might feel better by striking out against "the system."

As a caveat, note that our experience with dozens and dozens of sets of post-trial interviews has verified the occasional reverse bias – where the traumatized juror moves into a cynical stage and adopts a jaundiced view of life. Such a juror might actually be bitter and reason, "I've got it much worse than him, what is he complaining about?" and shut the plaintiff out on his claims.

Again, the only way to identify jurors suffering from ego trauma – and which way they may be unconsciously leaning – is to ask. Those undergoing extreme stress in their lives should probably not be jurors at all, and if the questioning is handled skillfully, it should become obvious to the court and may even lead to a cause challenge.

Those who have ego trauma but still qualify into the pool of potential jurors should be considered very carefully for the use of a peremptory challenge. Ego trauma

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jurors are wild cards if left on the jury panel, and litigators all know the “art” of jury selection dictates that someone will have to make the tough call as to whether that jurors’ life events will make them more pro-plaintiff or more pro-defendant.

Obviously, certain types of litigation should raise the “ego trauma” flag for defense counsel. Medical malpractice, wrongful death, toxic torts, and some employment cases spring to mind as examples where jurors are more likely to empathize with the injured plaintiff when they themselves are in turmoil.

Over three years after the World Trade Center attacks, the emotional pain of the immediate aftermath has faded. But in this and other tragic events, ego trauma remains on some level long afterward. This should be one of the many factors litigators take into account when trying to decide if a potential juror can render a decision based solely on the facts – and not be overly influenced by the biases and emotional baggage that all people carry into the courtroom.

Emotions that lie just under the surface have a way of spilling over, and for many individuals they can potentially affect both the manner in which information is processed and the way in which decisions are made. Whether it be from terrorist attacks or, more likely, the loss of a job or loved one, individuals experiencing ego trauma should be viewed with a wary eye during the jury selection process.

## **My September 11, 2001 Jury Selection**

So what happened at the jury selection?

The judge dismissed the Tuesday panel (although, in retrospect, motions in limine that extended into the afternoon probably had more to do with this than consideration for the feelings of potential jurors). The following day, the judge reviewed the suggested voir dire and indicated he would do all questioning of the jurors, including inquires into the impact of the terrorism on their lives.

He led off with a preamble about how terrorism was now a part of America, and how terrorists would like nothing better than to disrupt the daily routines of American lives. He indicated he was of the view that people should carry on with their day-to-day activities as a way of thwarting that terrorist goal. He asked the panel as a whole whether (paraphrasing):

...anyone is so affected by these acts of violence that you can not do your civic duty and stand up to terrorism by serving as potential jurors today. Raise your hand if you feel you can’t set aside the impact of these events and serve as a juror today.

Not too surprisingly, no one raised a hand. The judge then spent two to three hours questioning the panel, never again broaching the subject of terrorism (or anything relating to the traumatic events of September 11).

Fortunately, my client – a corporate defendant in a wrongful-termination claim – had a case involving claims by a high-level executive that he deserved millions more than his already near-million-dollar severance package (after just a few short months with the company).

The jury came back with what had to be considered a defense verdict, allowing only a claim for some pension benefits and an additional \$2,000 in relocation expenses, while denying all of the truly substantive claims – but only after nearly two days of deliberations.

Did ego trauma and the terrorist events play a role in how the holdout jurors viewed these claims? We may never know, due to the lack of questioning on life experiences by the judge. But I strongly suspect it did.

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