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Assessing Critical Thinking Skills as a Key Element of Trial Preparation

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As a trial consultant, legal psychologist and professor, I had the unique experience of serving on a jury in a civil case. At issue was the plaintiff’s inability to collect payment from the defendant insurance company for treatment allegedly administered as the result of an automobile accident. The amount due was \$6,000. The trial lasted two days. Witnesses for both sides included insurance claim adjusters, two attending physicians, the individual involved in the car accident, the rehabilitation center accounting clerk, and a chiropractor. At the completion of the case we had a single question before us: *“Should the insurance company pay the plaintiff [rehabilitation center] for services rendered to the individual involved in the automobile accident which were reasonable, necessary, and a direct result of the accident.”*

We were a jury of six Caucasian females between the ages of 38 and 68; five employed professionally, one retired, all college-educated. During deliberations, while reading through various insurance policies and medical forms, I was distracted and unsettled by questions I heard around the table: *“Let’s give him the money, it’s really not that much.”* *“I tried to collect once on my policy, it’s impossible and it takes forever, I understand what he’s going through.”* *“Why won’t they pay him, do they think he’s lying about the accident?”* I wondered how it was possible that five educated women could not discern the plaintiff from the individual involved in the automobile accident. With this in mind, I re-read the verdict form aloud and reviewed the facts of the case until they clearly understood the difference. After almost 4 hours of deliberations, we ultimately found in favor of the defendant insurance company.

Four years later, I continue to draw on the valuable lesson learned from this experience in my approach to teaching and consulting – take nothing for granted! Just as five educated women struggled with identifying the plaintiff in a two-day trial, students struggle with analyzing and evaluating the variety of possible explanations and viewpoints presented in class. As a consultant, this experience has taught me that fostering the skills necessary to think critically is not just a role reserved for the classroom. Critical thinking also underlies the basic elements of a valuable deliberation process. Guiding jurors to take charge of their own thinking minimizes the likelihood that verdicts will be based on anecdotal experiences, and rather on a deeper understanding of the key issues of your case.

Of course, it’s unrealistic to rely on a jury to think reasonably and reflectively without clear, straightforward direction from the trial team. The fact is, like students, jurors can also

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be confused about how to analyze and assess information presented during trial. For this reason, the following checklist developed by researchers (Elder & Paul, 2006), as a guide to increasing critical thinking skills in undergraduates, may prove useful to attorneys when preparing for trial. This list exemplifies why thinking is best understood and improved when jurors are able to analyze and assess evidence *explicitly*.

- All reasoning has a purpose. Take time to state your purpose clearly and be sure check periodically to be sure you are still on target.
- All reasoning is an attempt to answer a question or solve a problem. Be sure to state your question precisely and express it in several ways to clarify meaning and scope. Break the question into sub-categories distinguishing those that have definite answers from those that are matters of opinion from those that require consideration of multiple views or positions.
- All reasoning is based on assumptions. Consider how assumptions shape an individual's point of view and determine whether various points of view can be justified.
- All reasoning is conducted from some point of view. Identify the strengths and weaknesses of all points of view, carefully considering each one.
- All reasoning is based on data, information and evidence. Restrict your claims to only those supported by the evidence you have. Search for information that opposes your position as well as information that supports it. Be sure all information is relevant, accurate, and clear.
- All reasoning is shaped by concepts and ideas. Identify all key concepts and explain them clearly. Be sure you are using concepts with precision.
- All reasoning contains inferences or interpretations by which we draw conclusions and give meaning to data. Infer only what the evidence implies. Check inferences for their consistency with each other. Be sure to identify assumptions which underlie your inferences.
- All reasoning leads somewhere or has implications and consequences. Trace the implications and consequences that will follow from your reasoning. Consider all possible consequences. (pp. 8-9)

As can be seen from this list, the skills emphasized are the same skills needed by jurors to reason through the trial process and participate in a meaningful and cogent deliberation process. If this checklist seems trite, remember that five educated women failed to correctly identify the plaintiff in a two-day trial. Relying on reason rather than emotion, weighing the effects of motives, being aware of one's own biases and not allowing them to sway one's judgment, are the cornerstones of critical thinking (King, 1994; Kurland, 1995). Just as internalized reasoning creates better students, if properly guided, it has the potential to create better jurors.

References

- Elder, E., & Paul, R. (2006). The thinker's guide to analytical thinking. 2nd edition, Foundation for Critical Thinking, Dillon Beach, CA.
- King, A. (1994). Inquiry as a tool in critical thinking. In D. F. Halpern and associates (Eds.), Changing college classrooms: New teaching and learning strategies for an increasingly complex world. San Francisco, CA: Jossey-Bass.
- Kurland, D. J. (1995). I know what it says...what does it mean? Belmont, CA: Wadsworth.