



Proving and Maximizing Damages

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The Proof is in the Pudding:

Maximizing Damages

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I. Introduction: *Mark J. Obral*

II. The Traumatic Brain Injury (TBI) Case: *Mark J. Obral*

A. Proving The Injury:

1. Testing and Diagnostics:

a) The Concussion:

(1) A Concussion is a Brain Injury;

(2) The Glasgow Coma Scale (GSC);

(3) CT Scans at the Emergency Room;

(a) Relevance

(4) The MRI and the PET Scan;

(a) Relevance

(5) Neuropsychiatrists;

(6) Neuropsychologists.

B. Damages in a TBI Case:

1. Lay Witnesses:

- a) Extremely Important in a TBI Case;**
- b) Don't take no for an answer!**

2. Science:

- a) Scans of the brain;**
- b) Photographs, models, diagrams, charts;**

3. Radiologists:

- a) A great tool.**

4. Vocational Rehabilitation Experts and Economists:

- a) Empower the jury with OPTIONS;**
- b) Give them the Cadillac AND give them the basic Chevy.**

C. Damages in ALL CASES:

1. David Ball- Reptile

2. Rick Friedman- Polarizing

- a) Both techniques and philosophies are great to use;
BUT**
- b) Adapt and mold them to be appropriate for your case;**
- c) YOU are the best gauge as to when and how to use them for your case. YOU know your case better than anyone.**

D. VOIR DIRE:

1. Outside Interests: ---HIT IT HARD

- a) **Automobile Insurance;**
- b) **Health Insurance;**
- c) **Rates;**
- d) **Like or dislike of Plaintiff or Defendant;**
- e) **Who will pay or has paid the medical bills.**

2. Breaking the “Golden Rule”:

a) **Do it in voir dire:**

(1) Who is the most important person in the world to you?

(2) What kind of care would you want for that person?

E. Pain and Suffering:

- 1. Limitations;**
- 2. Effect on Life;**
- 3. Low pain and suffering awards end in low verdicts;**
- 4. What is the Answer???? WE NEED ONE!**

JURY RESEARCH PROJECTS FOCUS GROUPS

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You can become the fly on the wall in the jury room . . .

Focus Groups, Mock Trials, Jury Research Projects or any combination thereof.

Research projects are an effective source of valuable information. An effective focus group can be done in-house in a cost efficient manner. Focus Groups allow you to “try” your case before trial and benefit from the lessons learned from unbiased persons. These groups provide a cost-effective means of assessing case risks, without risking your investment in the case. They allow you to test your strategy, arguments, evidence, graphics, presentations, witnesses, and your clients on a typical panel of members of the community. These exercises allow you to identify controversial case issues, areas needing clarification, necessary (or unnecessary) exhibits, and provide feedback on all issues including potential damage valuations and potential jury verdicts. Most importantly, these exercises allow you to see why the group decided these issues in the manner in which they did and allows you to “sit in” during their deliberations.

- I. Select the Forum:
 - a. Make it convenient;
 - b. Make it comfortable;
 - c. Keep it simple & inexpensive

- II. Timing:
 - a. Start project at least 3-4 months before actual trial;
 - b. Complete actual project at least 2 months prior to actual trial.

- III. Selecting Participants:
 - a. Have staff make cold calls;
 - b. Make them random;
 - c. Use and follow script;
 - d. Follow-up and confirm with jurors:
 - i. Let them know their exact roles;
 - ii. Let them know exactly what they will be doing;
 - iii. Limit their time/respect their time;
 - iv. Make it easy for them:
 - 1. Convenient location with parking;
 - 2. Make directions and check-in process simple
 - 3. Start on time – end on time.

- IV. Presenting the Case:
 - a. Use a neutral presenter/moderator;
 - b. Brief introduction, outline the event, their role;
 - c. Present Plaintiff's case to entire group;
 - i. Generic Questionnaire
 - d. Present Defense case to entire group;
 - i. Generic Questionnaire
 - e. Highlight specific key components of each side's case;
 - i. Surveillance video
 - ii. "How would your decision be influenced by . . . "

- f. Break into individual juries;
 - i. Let them know they are being recorded via video but encourage them all to openly participate and provide reasoning for their decisions (there are no right or wrong answers);
 - ii. Provide jury verdict forms;
 - iii. Provide jury interrogatories;
 - iv. Ask the specific questions you seek answers;
 - v. Ask the tough questions.

- V. Summary points:
 - a. Be anonymous;
 - b. Listen, learn and react;
 - c. Be objective and realistic with strengths and weaknesses of both sides of case.
 - d. Focus groups, mock trials and Jury Research Projects are highly effective methods of obtaining feedback regarding case issues so that you can more effectively prepare your case for trial.