

Injured Body, Injured Mind: Dealing with Damages for Psychological Harm

by Brian H. Bornstein & Samantha L. Schwartz

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Samantha L. Schwartz, MLS [slschwartz1@yahoo.com] is a doctoral student in the Law/Psychology program at the University of Nebraska-Lincoln, where she earned a Masters in Legal Studies. Her major research interests examine how juror decision making differs by jurors' cultural and religious beliefs. She also has assisted attorneys on trial teams for criminal cases and litigation, and she has worked with trial consultants on change of venue surveys, mock trials, and post-trial juror interviews.

A principal function of the civil justice system is to make whole any person injured by another's careless or intentional actions, insofar as that is possible. In theory, this applies to all types of injuries, whether they are of a physical, psychological, financial, or property nature. In practice, however, not all injuries are created equal. Consider, for example, the recent case of Laura Schubert, a 17-year-old girl in Texas. Ms. Schubert sought compensation for injuries suffered in an exorcism conducted during a church youth group meeting¹. She testified that she was cut and bruised during the exorcism, which caused a variety of subsequent mental and emotional injuries, including mental anguish, emotional distress, post-traumatic stress disorder, depression, and a suicide attempt.

Ms. Schubert and her parents sued the church, the senior pastor, the youth minister, and several church members. They made a number of claims, including negligence, intentional infliction of emotional distress, child abuse, assault, and false imprisonment; only the claims of assault and false imprisonment went to trial. A jury found in favor of Ms. Schubert, awarding her \$300,000 for her pain and suffering, lost earning capacity, and medical expenses². On appeal, the Texas Court of Appeals reduced the award to \$188,000³, and on the defendant's further appeal, the Texas Supreme Court threw out the award altogether. The Texas Supreme Court held that the First Amendment's Free Exercise Clause precluded the church's liability for the plaintiff's emotional injuries. More relevant to the present discussion, the Court held that the First Amendment would *not* protect the church from liability for a plaintiff's physical injuries⁴.

Examples of Disparate Treatment of Physical and Psychological Injuries

The *Pleasant Glade* case reflects a widespread double standard with respect to the law's treatment of physical versus psychological injury⁵. There are numerous examples of this double standard; for illustrative purposes, we select two.

Example 1: The tort of negligent infliction of emotional distress (NIED).

Plaintiffs can almost always recover general, or noneconomic (e.g., pain and suffering), damages for psychological injuries that are attendant on negligently caused physical injury⁶. There is considerable variability across jurisdictions⁷ in what these psychological damages can include: pain (which has a mental as well as a physical component), mental suffering, emotional distress, mental anguish, loss of consortium or parental companionship, loss of enjoyment of life, anxiety, discomfort, humiliation, shock, and impairment of faculties are all compensable elements of general damages in various jurisdictions. There is no question that jurors respond to the psychological components of an injury. Mock jury research shows that plaintiffs' mental suffering contributes more to the perceived severity of their injuries and ultimate noneconomic damage awards than any other injury dimension (e.g., pain, disfigurement) except disability⁸.

Although all of these psychological injuries are potentially compensable when they result from physical harm, only rarely can plaintiffs recover damages for NIED *in the absence* of physical harm. That is, most states require a manifestation of physical harm for plaintiffs to recover damages for NIED⁹. This is true both when the plaintiff has been injured directly and when the plaintiff has witnessed injury to a third party¹⁰.

Moreover, to recover damages for the intentional or reckless infliction of emotional distress (absent a physical injury), the defendant's behavior must meet the higher standard of "extreme and outrageous conduct"¹¹. There are some limited instances – such as wrongful death cases – where the law allows damages for psychological injury alone due to negligence. Nonetheless, compensation for survivors' non-economic losses (e.g., mental suffering, loss of consortium) is controversial and limited, especially compared to compensation for economic losses (e.g., lost earnings). In addition, in wrongful death cases *someone* has suffered a physical injury (i.e. the decedent), even though the surviving plaintiff typically has not.

Example 2: The Americans with Disabilities Act. The Americans with Disabilities Act (ADA) classifies a person as disabled if he or she has "a physical or mental impairment that substantially limits one or more of the major life activities of the individual"¹². On the surface, then, physical and mental maladies appear to have equal standing. In practice, however, the courts treat them differently. Compared to physical illness, courts have been less likely to find that mental illness limits a claimant's major life activities; hence mental illnesses are less likely to qualify as disabilities under the ADA¹³. As with NIED, the ADA case law treats physical and psychological injuries differently.

Reasons for the Physical-Psychological Injury Distinction

The law's reluctance to place psychological injury on a par with physical injury arises from "the fear of fictitious or trivial claims, distrust of the proof offered, and the difficulty of setting up any satisfactory boundaries to liability"¹⁴. These are legitimate concerns, and the courts rightly seek to combat frivolous

litigation and malingering. It is easier to fake mental anguish than many physical injuries, such as a fracture, burn, or puncture wound. Yet as insurance adjusters can attest, claimants have faked virtually any injury imaginable, and some physical injury claims, like chronic pain or soft-tissue damage, can be just as hard to document and prove as psychological harm¹⁵.

Policy considerations necessarily dictate some limitation on potential defendants' liability, and the courts cannot be faulted for attempting to draw the line at an intuitively appealing boundary – namely, the line between physical and psychological symptoms. Unfortunately, the line is not as clear as it might at first appear. Severe emotional damages can occur in the absence of any physical injury. Consider, for example, a woman who lives with the fear that she is at higher risk for developing certain kinds of cancer because of a drug company's negligence in producing medication that her mother took during pregnancy¹⁶. Such a fear can be pervasive and debilitating. Barring recovery for such damages, or setting a higher standard of proof, is not necessarily a wise policy.

Problems with the Physical-Psychological Injury Distinction

There are two main reasons why the distinction is problematic¹⁷. First, it presumes that physical injuries are more legitimate, or serious, than psychological injuries. This presumption, which calls to mind the children's rhyme of "sticks and stones may break my bones, but words will never hurt me," is patently false. Psychological injuries can take as long to heal, can be as resistant to treatment, and can impair an individual's normal functioning, every bit as much, and in some cases more than, physical injuries. Serious mental illness costs billions of dollars in direct costs¹⁸ and even more in indirect costs, such as lost income¹⁹. In any given one-year period, roughly 20% of Americans, children as well as adults, suffer from a diagnosable mental disorder²⁰. These figures make it clear that psychological ailments can be quite severe.

The second problem is that the distinction ignores the close interconnectedness between physical and psychological health (and sickness), and the impossibility in many instances of teasing the two apart²¹. An abundance of research shows that physical ailments have psychological consequences and, in some cases, psychological causes²². Chronic illnesses (e.g., diabetes, multiple sclerosis) can cause depression and anxiety, and these psychological elements can worsen the symptoms and course of a chronic disease. Pain is a curious case in point. On the one hand, it is presumed to be a physical symptom that accompanies tissue damage; yet on the other hand, it is every bit as subjective as mental suffering, and it is likewise amenable to psychological treatment.

In addition, a wealth of research over the last half-century illustrates that many presumably "mental" illnesses have biological causes, such as structural brain abnormalities, neurotransmitter or hormonal imbalances, or genetic predispositions²³. With disorders like schizophrenia, bipolar and unipolar depression, obsessive-compulsive disorder, and substance abuse/addiction disorders all having at least some sort of biological contribution, it is harder nowadays to find a mental illness that does *not* have a physical component than it is to find one that does. Thus, one could just as easily say that Laura Schubert's botched exorcism caused a neurochemical imbalance and a host of physical symptoms (e.g., sleep and weight disturbance) as that it caused a pervasive mood change. Referring to certain disorders, such as schizophrenia or depression, in purely psychological terms would tell (at best) only half the story and would ignore some of the most effective treatments. Yet the courts continue to distinguish between physical and psychological injury, and to deem the former as more legitimate and therefore more deserving of compensation. Although some courts avoid the spurious distinction between physical and psychological injury and simply classify injuries as compensable or non-compensable based on their severity²⁴, the majority continue to prioritize, giving greater credence to

physical harm. This creates a challenge for plaintiffs' attorneys whose clients suffer from injuries that are primarily or exclusively psychological in nature.

What Plaintiffs' Attorneys Can Do

Attorneys have a few options in navigating their client's case of psychological injury. The options differ somewhat depending on whether the issue is one of getting the court to recognize the plaintiff's claim—as in NIED or mental disability—or maximizing the judge or jury's award for psychological injuries, but the same general principles apply to both situations.

Crossing the legal threshold. The “physical impact” rule that many jurisdictions apply in NIED cases requires proof that the psychological injury resulted from a physical injury caused by the defendant's negligence. The main issue that can bar these claims from even reaching trial concerns the timing of and the causal link between the psychological injury and the physical harm: For example, did the dysphoric mood state and other depressive symptoms cause the neurochemical imbalance, or vice versa? Research on the biological basis of psychopathology has generally failed to find a simple causal relationship; rather, the physiological and psychological symptoms are co-occurring, reciprocal processes²⁵. Thus, plaintiffs' attorneys can legitimately argue that the physical manifestation of mental illness preceded the psychological manifestation, or was at least simultaneous with it. It is noteworthy that even in jurisdictions that uphold a physical manifestation requirement, some courts have ruled that psychological (e.g., nervousness, anger, fear, bitterness) or psychiatric symptoms (e.g., mental illness, severe traumatic depressive reaction) may be sufficient to fulfill the requirement²⁶.

With respect to mental disability, the main goal is to establish the extent to which a plaintiff's mental illness limits a major life activity. The ability to do this will vary with the type and severity of the disorder, but the figures cited above regarding the prevalence and cost of serious mental illness can help in such an endeavor.

Oral argument. If the case goes to trial, plaintiffs' attorneys can “physicalize” a plaintiff's psychological injuries. Instead of (or in addition to) describing a plaintiff as suffering from stress or depression, they can describe the plaintiff's physiological changes. For example, they could focus on a depressed person's monoamine deficiency, sleep or appetite disturbance, and fatigue. We know of no research that has compared plaintiffs' outcomes (in terms of either liability verdicts or damages) as a function of how they present their psychological injury. Yet if laypeople share the court's double standard—and the longstanding stigma associated with mental illness suggests that they do—then making the disorder seem less mental, and more physical, will help.

Expert testimony. Plaintiffs' attorneys can use an expert to substantiate the legitimacy and extent of psychological injury, and to link it to physical injury. Physician testimony is routine to substantiate physical injuries. Medical experts testify to the injury's objective symptomatology, and if applicable, its causal link to the defendant's actions. Medical experts can also testify about the plaintiff's subjective experience of the injury and its psychological elements. However, mental health professionals are better suited to do so, and courts have allowed such expert testimony from psychologists²⁷, social workers²⁸, and counselors²⁹.



These mental health professionals can be particularly helpful in establishing the severity of the plaintiff's injuries and their impact on current functioning. They can buttress clinical impressions and formal diagnoses with results from any of a large number of standardized assessment tests, such as the Beck Depression Inventory, the Minnesota Multiphasic Personality Inventory, and intelligence tests. These instruments are normed and well-established based on repeated testing across multiple samples, allowing for a relative comparison of symptoms. In addition to assessing current functioning, expert evaluations can assess the change from pre-morbid functioning, which is particularly critical in cases of brain damage. Neuropsychologists are especially suited to performing this task,³⁰ which can also include findings from brain imaging techniques³¹. Neuropsychological assessment can also address the issue of malingering, which, as noted above, is a major concern when dealing with psychological injuries³². Based on these findings, the plaintiff's attorney can engage a mental health professional to prepare a forensic report that addresses the diagnosis and the causal link

between the defendant's conduct and the psychological injury.

Other witnesses. The expert testimony can be bolstered by additional evidence of psychological injury based on other sources which can demonstrate the plaintiff's injuries more vividly. Lay witnesses who know the plaintiff, such as family members, friends, or coworkers, can testify to the changes they have noticed in the plaintiff, thereby indicating the extent of the injury. For example, a supervisor could testify to a depressed plaintiff's increased absence from work and diminished productivity since the injury. Family members could testify to the plaintiff's increased irritability. Such testimony can be supplemented with demonstrative evidence, such as employee review documents dated before and after the incident, or a day-in-the-life video illustrating the plaintiff's current level of functioning³³.

Conclusion

In recent years, society in general has become more cognizant of mental illness, which has in turn become less stigmatized. This development suggests that courts will also gradually become more accepting of psychological injuries. Nonetheless, many courts currently continue to apply a double standard to physical and psychological injuries. To address this double standard, we have outlined a number of steps that plaintiffs' attorneys can take to maximize the impact of psychological injuries on judges and juries.

Endnotes

¹*Pleasant Glade v. Schubert*, 51 Tex. Sup. Ct. J. 1086 (2008).

² The jury apportioned liability as follows: 50% to the senior pastor, 25% to the youth minister, and 25% to the other defendants.

³ The intermediate appellate court eliminated the damages for lost earning capacity.

⁴ Ms. Schubert did allege some minor physical injuries (e.g., scrapes and bruises), but the trial dealt solely with her emotional injuries.

⁵ See, generally, P.A. Bell, “The Bell Tolls: Toward Full Tort Recovery for Psychic Injury,” 36 U. Fla. L. Rev. 333 (1984); Brian H. Bornstein, “Physical v. Mental Pain: A Legal Double Standard?” 40(2) APA Monitor 18 (Feb. 2009); G. Perrin & Bruce D. Sales, “Artificial Legal Standards in Mental/emotional Injury Litigation,” 11 Behav. Sci. & Law 193 (1993).

⁶ In such cases the psychological injury is often referred to as “parasitic” on the physical injury. See, generally, Edie Greene & Brian H. Bornstein, *Determining Damages: The Psychology of Jury Awards* (2003).

⁷ *Id.* See also Roselle L. Wissler et al., “Instructing Jurors on General Damages in Personal Injury Cases: Problems and Possibilities,” 6 Psychol. Pub. Pol’y & Law 712 (2000); Neil Vidmar et al., “Jury Awards for Medical Malpractice and Post-verdict Adjustments of Those Awards,” 48 DePaul L. Rev. 265 (1998).

⁸ Roselle L. Wissler et al., “Explaining ‘Pain and Suffering’ Awards: The Role of Injury Characteristics and Fault Attributions,” 21 L. & Hum. Behav. 181 (1997) [finding that disability made the largest contribution to mock jurors’ pain-and-suffering awards, followed by mental suffering]; Roselle L. Wissler et al., “Decisionmaking about General Damages: A Comparison of Jurors, Judges, and Lawyers,” 98 Mich. L. Rev. 751 (1999) [finding some variability depending on the respondent sample (i.e., jurors, judges, plaintiffs’ attorneys, defense attorneys), but that in general mental suffering was the second-best predictor of damage awards, after disability];

⁹ See, e.g., *Payton v. Abbott Labs*, 437 N.E.2d 171 (Mass. 1982); *Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993).

¹⁰ *I.e.*, “bystander recovery”; see D.J. Leibson, Recovery of Damages for Emotional Distress Caused by Physical Injury to Another, 15 J. Family Law 163 (1976-1977); Restatement (Second) of Torts, §436A.

¹¹ See, e.g., Restatement [Second] of Torts, §46; *Payton v. Abbott Labs*, at 175-6 (“Although this court has allowed recovery for emotional distress absent physical harm, it has done so only where the defendant’s conduct was extreme and outrageous, and was either intentional or reckless”).

¹² 42 U.S.C. § 12102(2)(A). The distinction between physical and mental/psychological impairments was maintained in the ADA’s 2008 Amendments.

¹³ *E.g.*, W. Wilkinson & L. Frieden, Glass-ceiling issues in employment of people with disabilities. In Peter D. Blanck (ed.), *Employment, Disability, and the Americans with Disabilities Act: Issues in Law, Public Policy, and Research* (2000) (at 68).

¹⁴ Restatement [Second] of Torts, §46, Comment b.

¹⁵ See, e.g., Valerie P. Hans, Faking It? Citizen Perceptions of Whiplash Injuries, in Brian H. Bornstein et al. (Eds.), *Civil Juries and Civil Justice: Psychological & Legal Perspectives* (2008), at 131.

¹⁶ This scenario was a central element of the DES class-action litigation. See, e.g., *Payton v. Abbott*, *supra* note 9.

¹⁷ See Bornstein, *supra* note 5; Perrin & Sales, *supra* note 5.

¹⁸ According to the U.S. Surgeon General, direct costs of mental health services in 1996 totaled \$69.0 billion, which represented 7.3 percent of total health spending. Mental Health: A Report of the Surgeon General, Ch. 2 (available at http://www.surgeongeneral.gov/library/mentalhealth/chapter2/sec2_1.html).

¹⁹ A recent study estimated that lost earnings amounted to nearly \$200 billion per year. 165 Amer. J. of Psychiatry; Kathleen Kingsbury, “Tallying Mental Illness’ Costs,” Time, May 9, 2008; available at <http://www.time.com/time/health/article/0,8599,1738804,00.html>.

²⁰ See the U.S. Surgeon General’s Report, *supra* note 18.

²¹ To some extent, this interconnectedness is implied by allowing damages for psychological injury that is parasitic on physical injury; but the tendency to view them separately, and as unequally meritorious, ignores the fact that it is not so easy to characterize an injury as purely physical or simply psychological. This latter issue is our concern here.

²² At least contributing causes, though not necessarily sole causes.

²³ See, generally, Susan Nolen-Hoeksema, *Abnormal Psychology* (4th ed.) (2007). By stating that these disorders have biological causes, we do not mean to imply that biological factors are solely responsible for their etiology. Rather, just as with physical ailments, there are a host of physical, psychological, and social/environmental contributing factors.

²⁴ E.g., *Rodrigues v. State*, 472 P.2d 509 (Haw., 1970).

²⁵ Nolen-Hoeksema, *supra* note 23.

²⁶ *Stites v. Sundstrand Health Transfer, Inc.*, 660 F. Supp. 1516, 1527 (W.D. Mich. 1987); *Towns v. Anderson*, 579 P.2d 1163, 1164-65 (Colo. 1978); *Toms v. McConnell*, 207 N.W.2d 140, 146 (Mich. 1973) *Leaon v. Washington County*, 397 N.W.2d 867, 875 (Minn. 1986).

²⁷ *Kinsey v. Kolber*, 431 N.E.2d 1316 (1st Dist. Ill. 1982); *Westinghouse Elec. Corp. v. Lawrence*, 488 So. 2d 623 (Fla. Dist. Ct. App. 1st Dist. 1986); *Hidden v. Mutual Life Ins. Co. of N.Y.*, 217 F.2d 818 (4th Cir. 1954).

²⁸ *Honea v. Prior*, 369 S.E.2d 846 (S.C. Ct. App. 1988).

²⁹ *Sabrina W. v. Willman*, 540 N.W.2d 364 (Neb. 1995).

³⁰ See, e.g., W. Drew Gouvier et al., *Assessment of Damages II: Neuropsychological Concerns*, in R.L. Wiener & B.H. Bornstein (Eds.), *Handbook of Trial Consulting* (forthcoming).

³¹ *In re Hawaii Federal Asbestos Cases*, 734 F. Supp. 1563, 1568 (D.Hawaii, 1990).

³² See also Gouvier et al., *supra* note 30.

³³ Day-in-the-life videos are potentially prejudicial, so they need to be made with care in order to gain admissibility. See Brian H. Bornstein & Robert J. Nemeth, "Jurors' Perception of Violence: A Framework for Inquiry," 4 *Aggression & Violent Behav.* 77.

We asked two experienced trial consultants to respond to this article on presenting damages for psychological harm. Carol Bauss and Karen Lisko offer their responses.

Response by Carol Bauss

Carol Bauss, J.D. (CBauss@NJP.com) is a trial consultant with the National Jury Project/West in Oakland, California. She has over 16 years experience in mock juror research, case strategy consultation, witness preparation, supplemental juror questionnaire design, jury selection and post-trial juror interviews.

Brian Bornstein and Samantha Schwartz provide a thorough examination of the double standard in the legal system involving the treatment of psychological and physical injuries. This double standard is also present in how jurors evaluate personal injury claims. One of the greatest obstacles plaintiffs' personal injury and employment attorneys face today is how to convince jurors that psychological injuries like emotional distress and pain and suffering are worthy of compensation. Emotional distress has become a buzz word for the anti-lawsuit crowd and is synonymous with frivolous lawsuits and out of control damage awards.

Jurors express several objections to compensating emotional distress. First, it is difficult to assign a numerical value to someone's suffering. For example, how do you translate someone's depression and sleepless nights into a dollar value?



Second, everyone has to endure suffering in his or her life. Bad things happen to everyone, suffering is merely a fact of life, and money won't change that.

Third, some believe that mental distress is a mind-over-matter challenge. As a prospective juror in a recent employment discrimination jury selection explained, "I don't believe in damages for emotional distress. You have to accept that some stuff happens. If I feel I am having emotional problems I try to get back on track." According to this view, if you can control your suffering, it isn't compensable.

Fourth, some jurors won't accept emotional distress in the absence of medical testimony supporting such a diagnosis or at least demonstrating enough severity to require treatment. However, we know how frequently plaintiffs do not seek counseling for their emotional distress.

As a result of jurors' reluctance to consider intangible damages, I counsel all of my clients who have potential psychological injuries to cover this topic in voir dire. It is helpful to ask each prospective juror how they feel about the concept of awarding these kinds of damages and whether they have any limits in their mind about the amount for non-economic damages. Jurors' responses on this topic are very telling, not only for their opinions about damages but also on their receptivity to liability.

I recently worked on a case where the damages were all psychological in nature. The plaintiffs' home water supply was tainted with toxic chemicals. Although the plaintiffs apparently did not suffer any physical harm, they were seeking compensation for the fear of getting sick in the future. The challenge was to communicate to jurors the plaintiffs' current state of mind. We learned from mock jury research that one effective technique was to have the plaintiffs walk through a typical day and report the number of times they and their family members had to use water and how all-consuming it was to think: "Is this going to make me sick" every time they turned on the water. The fear of the unknown was a constant burden to them.

Jurors often ask themselves, "What will the money accomplish?" when they are assessing damage awards for mental pain and suffering. Because money can't take away a loss, jurors look for a way money can make the plaintiff's life better. They may have an easier time awarding money that can be earmarked for the plaintiffs to use for therapy or for a vacation to take their mind off their worries or for classes to find a new career and increase their self-sufficiency. Helping jurors identify how a damage award could ease the plaintiff's pain and suffering is a good goal for the closing argument.

Karen Lisko responds:

Karen Lisko, Ph.D. (klisko@persuasionstrategies.com) is a senior litigation consultant with Persuasion Strategies. She is past President of ASTC and current member of the ASTC Foundation Board and works primarily in civil litigation cases across the nation.

Bornstein and Schwartz do their typical thorough job of pairing important jury research with good strategic thinking. Their comments and recommendations fall squarely on point with approaches that work with jury persuasion and damages. Those comments also call forward two further strategic points that counsel should consider when persuading a fact finder to award damages for psychological injury.

The Four-Square Cycle of Monetary Good

Bornstein and Schwartz note, “An abundance of research shows that physical ailments have psychological consequences and, in some cases, psychological causes.” That logic makes sense to many but demands a fourth element to be its most persuasive. Consider the four-square cycle of monetary good. Harm occurred from the defendant’s negligence (Square One), the plaintiff sustained psychological injury (Square Two), psychological injury can cycle back into heightened or prolonged physical problems (Square Three), and a monetary damages award can break or at least ameliorate this cycle (Square Four). While no known social science study proves this point, the plaintiff’s or an expert witness’ testimony can. More importantly, it must. Mock trial research finds that jurors are more motivated to award money damages when they see good that will come from the award. Without Square Four (the good of the money), the plaintiff’s level of functioning seems hopeless, doing little to motivate an award for psychological recovery. This focus on psychological recovery over psychological damage may seem unfair but seems to be a very real part of many jurors’ evaluative processes.

Watch for Parallel Universes in Jury Selection

Bornstein and Schwartz further note that “...if laypeople share the court’s double standard—and the longstanding stigma associated with mental illness suggests that they do—then making the disorder seem less mental, and more physical, will help.” So very true. Privately sponsored mock trial research bears out the fact that laypeople absolutely do express this double standard. In addition, that research shows time and again that jurors hearken back to their own lives when evaluating a plaintiff’s claims. Certain prospective jurors are more likely to act as jury experts in this regard. We have frequently heard plaintiff’s counsel make the mistake of assuming that prospective jurors with experience similar to that of their client will make good plaintiff’s jurors. Quite often, the opposite is true, particularly with two specific types of jurors. First, a juror with a personal or familial history of mental illness will filter this evidence through her own experience. If that sifting process ends with the juror concluding that the plaintiff has had less of a difficult time than the juror/juror’s loved one, this juror could prove dangerous for the plaintiff. Second, a juror with a personal or familial history of physical injuries similar to that of the plaintiff can be especially judgmental toward the plaintiff. In this juror’s view, they “got over it without monetary compensation. So too can the plaintiff.”

Citation for this article: *The Jury Expert*, 2009, 21(2), 33-41.

Welcome to our March issue of *The Jury Expert*!

As spring moves in and brings new life to the world around us, so this issue of *TJE* is packed with new ideas and energy. Some ideas you may find to be things of beauty, others may make you go ‘hmmmm’, and still others may make you wrinkle your face with disgust. Our hope is that every article in *The Jury Expert* elicits some response in you--agreement, disagreement, aha moments, and yes, even disgust!

This issue is filled with contributions from ASTC member trial consultants and from the academics who actually perform the research upon which much of what we, as trial consultants, do is based. Flip through the pages of this pdf file or travel about on-line at our website and view all of *TJE* on the [web](#).

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-- [Rita R. Handrich, PhD](#)
Editor, *The Jury Expert*



The Jury Expert [ISSN: 1943-2208] is published
bimonthly by the:

American Society of Trial Consultants

1941 Greenspring Drive
Timonium, MD 21093
Phone: (410) 560-7949
Fax: (410) 560-2563
<http://www.astcweb.org/>

The Jury Expert logo was designed in 2008 by:
Vince Plunkett of *Persuasium Consulting*
<http://www.persuasium.com/>

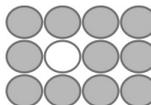
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