

Your legal dream team... Cover your bases!

Got lawyers?

Got experts?

Got psychologists?

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Psychologists are essential members of your legal team because the “deciders” in your dispute are people, and psychologists know how people think.

Attorneys are not real people.

Well, not the right kind of people anyway.

You see, attorneys have gone through a multi-year process dedicated to transforming them into – you guessed it – lawyers who see and experience the world in a completely different way from the ordinary people who will decide your case.

This shift in perspective is inevitable and it happens in many professions. Doctors forget what its like to be patients and underestimate how alarming it is for family members to have someone hospitalized. Nuclear scientists forget how ordinary people evaluate the risk of a reactor meltdown and underestimate the “not in my back yard” phenomenon in building a power plant.

Cognitive Lenses in the Legal Field

I once worked on an automotive case where the manufacturer faced a class-action lawsuit alleging fraud. The people bringing the suit were owners of the company’s top-

selling model SUV. They claimed the company had defrauded consumers by misrepresenting the size of the gas tank on the sticker.

The vehicle’s sticker said the model had a “30 gallon tank,” but in actuality it was “only” a 28.5 or 29-gallon tank. The class-members wanted money damages to cover the cost of replacing each owner’s gas tank with a *bona fide* 30-gallon tank.

The company initially scoffed saying this “BS” suit was concocted on the golf course by one vehicle owner and his brother-in-law -- who happened to be a class-action-attorney.

The defense attorneys for the company also snickered at the allegations of fraud and fully expected to get the case thrown out of court. But, the judge refused.

Suddenly, the company and its attorneys faced a jury trial. At that point, they called in “the big guns” for help — my company did the jury research and then developed trial strategy.

Cognitive Lenses in the Real World

My company recruited several dozen participants to hear each side’s position in the case, and to decide who should win.

Essentially, the plaintiffs’ case was that the company deceived the public and deprived consumers of important information that might have influenced their purchasing decisions. Therefore: fraud.

The company’s defense was that this lawsuit was a prime example of a “money-grab” by class action lawyers because no one buys an SUV based on the size of the gas tank, and the statement on the sticker was not important to consumer decision-making. Therefore: no fraud.

Plaintiff counsel thought the case was worth tens of millions of dollars. Defense counsel thought it wasn't worth a dime.

Plaintiff and defense attorneys were wrong.

How did jurors solve the case?

Jurors identified with vehicle owners as consumers who are subject to the whims of big company advertising. The case activated memories of their own experiences with "false" advertising, and products that fall short of their promises.

Jurors acknowledged that the size of the tank may not have been the "make or break" factor for *all* consumers, but it was likely important to *some* consumers in *some* markets, so the company ought to be forthright.

After heated deliberations, jurors concluded that the company had a moral obligation to provide "full disclosure," and they cast a vote for the plaintiff in the name of "truth in advertising."

The plaintiffs won. Well, sort of.

Jurors flatly rejected plaintiffs' demands for millions in damages.

Jurors' decision-making on damages was based on two common perceptions: (1) *most* vehicle owners were not harmed by the company's conduct because they don't care a whit about the size of the gas tank on their vehicle and would pocket the money, and (2) class-action attorneys would take the lion's share of the damages award leaving class-members with pennies.

Jurors dreamed up a solution involving a "voucher" program whereby consumers who *really* wanted to replace their tanks could do

so at the company's expense, but neither consumers nor attorneys would get a cash windfall.

In sum, jurors achieved "justice" by sending the message that companies should not "hide the ball" from consumers, and class-action lawyers should champion the cause of people who are truly harmed.

Moral of the story:

Jurors want to render a "just verdict." Be sure you know what that means to real people before you go to trial.

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