

# Chicago Daily Law Bulletin®

VOLUME 165, NO. 109

LAW BULLETIN MEDIA

## Leading horses to water, but let them decide when to drink

Recently, when attempting to bargain with Jack, my 17-year-old son, to work on his U.S. history term paper, I was met with incredible sarcasm and resistance. Not really a shock when I think about his age.

I altered my strategy and presented a logical appeal to him on the potential benefits of working on his term paper now, rather than cram it in later in the week. It finally sunk in, and when given the choice, he worked on his term paper — in exchange for more weekend time on Xbox. Hey, whatever works.

I was struck by the similarity in trying to persuade my son and juries. It is a different relationship, no doubt, but the psychology behind the interaction, and the ultimate outcome, is very much the same.

All people relish the option to choose. We treasure the freedom, along with the notion that we are in control of our own actions and decisions. Telling or mandating 12 jurors, or my teenage son, how they should act or what they must do can quickly distance yourself from them.

In working with a jury, the key is in suggesting, not demanding, a desired outcome. Giving jurors options, or seemingly leaving the decision up to them, makes them feel less controlled.

This is especially true with younger jurors. You do not want jurors to envision you as a puppeteer attempting to manipulate them. They appreciate the freedom of choosing for themselves. When that freedom occurs, they are empowered. When you can empower a jury, a favorable result is more likely.

Yet, people want direction when navigating unfamiliar territory, i.e., serving on a jury. You must be the guide for the jurors and lead them toward the outcome you hope and want them to reach.

However, telling them outright what you expect them to do may make them no longer want to follow you, simply because you failed to provide a choice for them.

For a plaintiff's attorney, it is paradoxical that leaving an element blank on a jury verdict form can lead to a higher result for that element of damages. Really? Why leave an element blank? You may suggest and recommend results jurors may possibly reach for most elements of damage, but by leaving one element blank and leaving it up to the jury, the jury now believes they have a real say in the ultimate outcome and verdict.

In my latest trial, I left the element of conscious pain and suffering blank on the verdict form. I told them that



### BALANCING LIFE AND THE LAW

JEFFREY J. KROLL

*JEFFREY J. KROLL is a founding partner of Kaveny + Kroll LLC. He has achieved settlements and verdicts in a wide range of cases, from trucking accidents to medical malpractice to sports safety cases. jeffrey@kavenykrroll.com.*

I struggled to come up with a value for the final moments of one's life. The jury returned a verdict of \$1 million for that element.

Another factor is credibility. If I tell my son exactly where I would like him to attend college, and if he ends up hating it, I lose all credibility with him.

Credibility: It's something which has all but vanished on countless occasions in his 17-year-old eyes. Similarly, if I tell

a jury exactly what I think about an unclear aspect of the case, and I end up being even slightly wrong, my credibility is gone. When they own their decision, an attorney's credibility is less likely at risk.

If you lose your credibility as an attorney, you lose the case. It is next to impossible to unring the bell. Similarly, if you lose your credibility as a parent, anything you say to your child from then on holds less weight.

I speak from experience both in the courtroom and in the home. More than 10 years ago, I was pressed on the existence of Santa Claus. I held steadfast to the opinion Santa was real. Once that bubble burst, it took a while to regain credibility with my son. As a side note, do not leave a note from Santa on the screen of your home computer. This will contribute to one's lack of credibility.

We want to be able to do what we would like to do.

As a species, we enjoy our free will and do not appreciate it being compromised. So, by mandating the exact outcome you want a jury to reach, you risk jurors wanting to ignore your recommendations entirely.

I have a strong suspicion trying to get Jack to jump-start his college essays this summer will also fall on deaf ears.

Hmm, onto Plan B.