

It's Getting Hot in Here: How Anger and Frustration Drive Verdicts

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In 1939, five researchers from Yale University published a theory they called the "Anger-Frustration Hypothesis," which proposed that human aggression can be universally explained by the anger and frustration that comes from thwarting goals that individuals seek to reach.¹ In other words, preventing someone from achieving an important goal causes anger and frustration that drives extreme behaviors. In the seventy-six years since being published, other researchers have examined this theory within different contexts in relation to various dimensions of aggressive behavior.

One context that has been overlooked is jury decision-making. In fact, one of the most popular theories (Keenan and Ball's *Reptile*) takes an entirely different tact in its effort to explain juror behavior. *Reptile* suggests that large verdicts are born out of fear and perceptions of threats. Consequently, Keenan and Ball argue that any successful strategy for the plaintiff should be packaged in fear appeals – a "if you don't punish the defendant, then this could happen to you" appeal. They argue that the fear activated by a perceived threat activates the Reptilian components of our brains and kicks us into survival mode, which works against defendants and leads to large damage awards.

Setting aside the fact that the science the book claims to rely upon has largely been discredited by brain researchers, Keenan and Ball fail to account for a much more powerful "Just World" reaction. The "Just World Theory" suggests that people respond to traumatic fear by differentiating themselves from the victim. For example, a juror might tell himself that he would never suffer the injuries of the plaintiff because he would make better choices. This is a simpler and more psychologically-satisfying resolution of fear and it can cause Keenan and Ball's tactics to backfire.

This might leave us with no alternative theory for "runaway" juries. However, after watching hundreds of mock jury deliberations, conducting shadow juries, and interviewing actual juries, the explanation is pretty clear: anger drives large verdicts, which means our focus should be on the "Anger-Frustration Hypotheses."

In litigation, the goal that is thwarted is the jurors' expectations of how the world should work and/or how people should behave. It is a violation of the rules and values that jurors believe are important to the world that they want to live in.

¹ Dollard, J., Doob, L., Miller, N., Mowrer, O., & Sears, R. (1939). Frustration and aggression. New Haven, CT: Yale University Press.

Typically, the defendant is the perpetrator. The rules can be actual laws, but they can also be societal norms and ethical violations. The greater the violation, the greater the frustration, and consequently, the more extreme the reaction. Furthermore, when jurors perceive a defendant as simply not caring about the violation, there is greater anger and a subsequent desire to “punish” the defendant by leveling a large damage award (even absent a punitive damage claim).

Some might argue that this is essentially the *Reptile* theory, but there are critical distinctions. First, the fear appeal of *Reptile* makes the victim and his or her injury the central focus. It asks jurors to place themselves in the role of the victim and imagine the injury happening to them. Conversely, the “Anger-Frustration Hypotheses” places the defendant and its behavior at the center of the discussion. Sympathy for the victim does not drive large damage awards; anger at the defendant does.

Second, *Reptile* sets a lofty standard for plaintiffs, requiring them to find a way to generate perceptions of such a great and immediate threat amongst jurors that the survivalist parts of their brain kick in and take over. Conversely, the “Anger-Frustration Hypothesis” only requires plaintiffs to show defendant’s violations of rules or values in stark contrast to jurors’ views of how people *should* act.

So, let’s look at the most common sources of anger and frustration in a case:

This first potential source of anger and frustration in a case is the appearance of patterns of poor choices. Jurors can forgive one mistake or poor choice, but it is much more difficult for them to excuse a pattern of poor choices. Patterns are important because they tell us something about the person or company engaged in the pattern. While one instance of something can be explained by a unique set of circumstances, patterns are more indicative of the general values at play during the decision-making process. In other words, patterns tell us about character and character is what tells jurors whether your client is a good guy or a bad guy.

A second potential source of anger and frustration comes when jurors believe that there was a “simple” or “cheap” fix or way to avoid the violation. Jurors are very good at creating long lists of “should haves” and “could haves” – no matter how far-fetched they may be. If there was a “simple” way to avoid the injuries claimed, then the defendant’s behavior is viewed as all the more egregious and worthy of punishment.

A third potential source of anger and frustration is the testimony of key witnesses. The demeanor of a witness helps jurors figure out what kind of person he/she is; then the actual substance of the witness’s testimony is filtered accordingly. A great example is a medical malpractice case. A significant part of the jurors’ decision-making process involves watching the doctor on the stand and

deciding whether or not he or she “seems” like the kind of person who would commit the alleged malpractice. A key component is their own determination of whether or not they would want the defendant doctor as their doctor. If the answer is yes, and jurors form favorable impressions of the doctor, they will do a lot of work to explain away, reject, or just ignore evidence that goes against their favorable impressions. The converse is also true. If jurors do not like the doctor, they will find ways to “pile on.”

For this reason, key witnesses can serve as gatekeepers for anger and frustration. An arrogant, uncaring doctor will frustrate jurors and make them want to find in favor of the plaintiff. A product developer who shows indifference on safety questions raised by the plaintiff will lead jurors to conclude that the defendant product manufacturer “doesn’t get it” and needs to be sent a message. In short, a witness’s performance on the stand evokes certain values, some that are helpful and some that will make jurors very angry.

In conclusion, the “Anger-Frustration Hypothesis” is very useful for helping explain the “runaway jury.” Angry or frustrated jurors need outlets for that frustration and it usually comes in the form of damages. While states such as Washington do not allow for punitive damages, jurors do not let this serve as a barrier. Instead, they will simply shift the punitive damages into another available category such as pain and suffering.

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