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Why doesn't the defense bar share like the plaintiffs' bar? Money.

By Robert F. Tyson Jr.

Compared to plaintiffs' counsel, those on the defense side rarely share anything with each other. The plaintiffs' bar has blogs, mentoring, seminars, listservs, articles — you name it — to share lessons learned, best practices and tricks of the trade. Nearly all of the trial books that have been written are for plaintiff lawyers too, such as “The Reptile Theory,” “David Ball On Damages,” anything by Nick Rowley, and many more. The best plaintiff lawyers in America are taking time to share their proven methods with plaintiff firms, big and small, around the country.

Can you imagine Messrs. Wilson & Elser or Messrs. Lewis & Brisbois responding to an email inquiry from a solo defense lawyer in Topeka, Kansas about a defense strategy for an upcoming trial? It would never happen — most likely because the defense lawyer would never even think of asking!

We Share Nothing

Defense lawyers share almost nothing with each other. Yes, there are plenty of wonderful defense organizations that do a great job disseminating information and bringing defense lawyers together, but these efforts do not compare to what the plaintiffs' bar does. In fact, the plaintiffs' bar knows more about defense lawyers than we know about ourselves! They have our closing arguments, our depositions, who we like as experts, our motions in limine, which mediators and judges we like, the arguments we make, who our clients are — everything.

What's worse: The plaintiffs' bar assumes the defense is sharing with each other! For instance, the author of the famous “Reptile Theory,” David Ball, has given over six hours of webinars on how to combat my new book — the only book ever written for the defense — “Nuclear Verdicts: Defending Justice For All.”

Yes, the Mr. Ball has spent half a dozen hours, going chapter by chap-



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ter trying to break down and disprove my defense methods for taking back justice. But why bother? Are defense lawyers even reading the first book ever written for them? Are they using these methods to stop nuclear verdicts? Are they sharing this information with each other? Are they hosting webinars on the solutions needed to defeat plaintiffs' techniques for obtaining nuclear verdicts over the last 10 years? Not really.

Follow the Money

The main reason some lawyers share and others do not is: Money! Plaintiff lawyers share because they stand to make more money if they do — they may get brought into the case or be referred another case from a lawyer they have helped. Helping other plaintiff lawyers achieve huge verdicts also effectively helps all plaintiff lawyers by driving up overall verdicts and settlements (also known as social inflation), of which they receive a percentage.

Defense lawyers, on the other hand, make money on volume. The defense has repeat customers. We take lower rates and wait to be paid, for volume. Most importantly, we all want the same clients, over and over. We are in constant competition for the next case or the next big (especially long-term) client.

That is certainly not the case for plaintiff counsel. What is the chance that a severely injured client gets in a second horrific accident and uses a competing plaintiff firm? Or more analogously, what are the chances that plaintiff gets in 10 more accidents that same month, and every month for the

next 10 years, like a defense counsel's client?

Is it a real fear of defense lawyers that they will lose business if they share with their competition? Is it reasonable to be worried that if you ask for help on a listserv of 5,000 defense lawyers, one of them may share your lack of expertise with an insurance company or other client? And if you share your expertise in an article or conference, is it possible some other lawyer may impress your mutual client with your ideas and take your business? Maybe. If your whole business model is based upon repeat business, why risk it?

Why Should the Defense Share?

The defense should share for three key reasons: justice, clients and money.

Most of us became defense attorneys because we believe in achieving “justice for all.” The American civil justice system is meant to be an equal playing field to determine whether and how to compensate someone who suffers a loss. When an individual or company are held liable for an injury, the award should be fair and reasonable for everyone — not just injured plaintiffs and their attorneys.

Nuclear verdicts, by their very nature, have nothing to do with justice or fairness. These large jury awards, often over \$10 million, are driven by plaintiff attorneys' attempts to incite a jury to seek retribution against the defendant out of anger or fear. So, defense attorneys who are truly dedicated to justice must share their experiences, proven methods, and knowledge to help other defense lawyers achieve justice.

Defendants want to avoid nuclear verdicts just as much as their defense counsel, right? So naturally, clients want their defense counsel to learn and use the best techniques and strategies out there. It is only a matter of time before corporate clients become a larger part of the solution to minimize nuclear verdicts — either by financially incentivizing defense counsel to win at trial or by choosing to only work with attorneys who have proven they can win. Share, and be a winner!

And now we are back to money. When I set out to write the first book for the defense, my partners worried about giving away all our “secrets.” But I have always believed if you do the right thing, the money will follow. Share, help, educate, support and encourage your fellow defense lawyers and you will be rewarded. It has been very true so far for me and it will likely be true for you too.

The answer to sharing is very simple and was told to us years ago by Nike: Just do it. Write articles, give speeches, mentor, start a listserv — do something! Sharing takes time, effort, and most of all, commitment. But if we all play nice, defense lawyers, our clients, and justice will all be much better off for it. ■

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