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Weighing the value of life, death and work

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This past Easter was an emotional one for the Kroll family. My son, Jack, told us he no longer believed in the Easter Bunny. In fact, all mythical figures were fair game for Jack: He threw Santa Claus under the sleigh and then laughed dismissively at the Tooth Fairy. He presented a pretty solid case. As a trial lawyer/father, I was proud of his persuasive skills, but the moment was bitter sweet. Jack's words, "How could I have believed in these fairy tales all this time," stung my wife and me. Our son was growing up, closing the door on one of the most magical parts of being a child, naïve faith.

The next morning, while driving to work, my iPod shuffle randomly played Harry Chapin's "Cat's in the Cradle." The timing couldn't have been more poetic. The song's maturing son, admiring his busy father; the father, working hard to pay the bills and provide a good life for his family. The haunting lyrics have echoed in my mind since my son's birth ("When you comin' home, Dad? I don't know when, but we'll get together then son. You know we'll have a good time then") as a reminder that if I am not careful, the tables will turn on me one day, and I may reap what I have sown. I have made critical career decisions to avoid the scenario at the end of "Cat's in the Cradle." When my son asks me, "When you coming home, Dad?" I know when.

Why should my son's disillusionment with the Easter Bunny impact practicing lawyers, you might ask? Better yet, does spending time with your children have anything do with trying cases? Well, I could tell you that the sentiments are an analogy for keeping imagination alive in trial work (which I advocate) or I might argue that it's a reminder to always present your best case even when the facts and law seem to be 100 percent in your favor (which is just plain smart). In reality, it's a bit of both, but in the end it's that Chapin song that forges my thoughts on the balance of work life and home life.

The idea of "society," a central concept in wrongful death cases, comes to mind. As a trial attorney that has handled many wrongful death cases, I have represented numerous parents that have sadly lost children due to negligence. In addition to sorrow, death cases can conjure up uncomfortable sentiments for everyone involved. The human mind cannot stop from wondering: How much is someone's life worth? How can anyone put a monetary value on the life of a young (or older) person? These are philosophical questions that many ponder, but let's face it, there is not (and probably never will be) a black letter answer. This is very case specific.

Illinois Pattern Jury Instruction 31.11 defines "society" as "the mutual benefits that each family member receives from the other's continued existence, including love, affection, care, attention, companionship, comfort, guidance and protection."

The biggest misconception that jurors can take from the presentation of a wrongful death case is that they have a duty to assign monetary value to the life of the decedent. A while back, my associate Pat White and I presented a wrongful death case to a focus group. When screening candidates for the focus group, potential mock jurors expressed concerning thoughts. One person said, "This makes me feel dirty. How do we put a number on someone's life?" Another said, "Who am I to decide how much someone's life is worth after hearing about the person for a few hours?"

Although you want to weed out jurors that may muddy the jury room with philosophical debates that would certainly interfere with the instructions of the case, you can be sure that the jurors you do choose to empanel will probably consider these questions, even if for just moment.

In cases involving minors, the Wrongful Death Act provides a cause of action for the surviving parents and next of kin. The family's attorney must find a way to make jurors understand that the surviving family is actually requesting compensation for the loss of society, not putting a price tag on the child's life. Sometimes, this distinction is lost with jurors.

For each family member, the mutual benefits of love, affection, care, attention, companionship, comfort, guidance and protection are accentuated in different ways. In fact, within one family, your case could vary drastically. Mother, father, sister, brother — the mutual relationship between each person and the deceased is unique. That is why the testimony of family members and friends is critical. You cannot gild the lily in a wrongful death case. Ancillary support should come from a bombardment of photographs and/or videotapes of the child with each family member. The familial relationship must come alive in the courtroom.

Think about your relationship with your own child (or sibling), for example. Use the definition of society as a guide. For me, I imagine that my son's benefit of my continued existence likely focuses on the love, care, guidance and protection that I provide to him as his father. Conversely, my benefit from his continued existence is rooted in love, affection, care, attention, companionship, comfort and even guidance. Guidance from a child? Sure. ... How else would I know the words to "Grenade" by Bruno Mars. How does the trial attorney illustrate this in a courtroom? Imagine the Kroll family breakfast table. I grab a cup of coffee

and pour a bowl of Cheerios for my son. My wife is upstairs dressing my daughter for the day. My son and I have a few moments together to talk sports and prepare for his spelling test before he either high fives me, gives me "knuckles" or darts out the door. It is not easy to fix a reasonable amount of money on a moment like this. It's like one of those MasterCard commercials, priceless.

But, the attorney trying a case involving the negligent death of a child must do exactly that. Request an amount of money that will reasonably and fairly compensate the family member for the loss. Many years ago, I wrote an article titled, "Closing Arguments in Civil Trials: How Far Can Lawyers Go?" Illinois Bar Journal, December 1998. There, I cited *Dotson v. Sears, Roebuck and Co.*, 157 Ill. App. 3d 1036 (1st Dist. 1987), where the trial court found it proper that the plaintiff's counsel illustrated "the gravity of the plaintiff's injuries by noting that horses, paintings and computers are frequently bought and sold for millions of dollars." Trial attorneys must use similar, appropriate analogies to depict the value of the loss to the survivors.

A family dealing with the loss of a child due to the negligence of another will only have one day in court. Long before the trial of this matter, the family has most likely received an abundance of sympathy from friends and relatives at the child's funeral. What they need at trial is the jury's empathy and understanding as to what this family has experienced and will continue to experience in the future.

I am a trial lawyer; but, of course, I am also many other things — a husband, father, son, brother, friend, boss, coach and neighbor. Which role has the most value over the course of a lifetime? Who knows? One thing that I do know is that I want to live life fully. Tomorrow is not promised. This is the attitude that I share with my children and try to bring to the practice of law as well.

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