

THE IMPORTANCE OF JURORS' DIRECT EXPERIENCES IN JURY TRIALS

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INTRODUCTION

Discovering Jurors' direct experiences with the issues or instrumentalities of a case is a critical part of the voir dire process. Jurors' direct experiences in certain instances control their decision making during the trial. Their direct experiences may determine how they will hear evidence and how they will decide the ultimate outcome. Therefore, it is important that as trial lawyers, that we understand the nature and power of direct experiences and that we seek them out during the voir dire process.

THE NATURE OF DIRECT EXPERIENCE

Direct experience occurs when we experience something first hand and personally. When we eat an onion, we directly experience the onion through our senses and we form opinions, beliefs and attitudes about the onion. We taste the onion personally and while doing so we draw conclusions and form beliefs and attitudes about its taste. It tastes good, it tastes bad, it smells good, or it smells bad. We actually feel the texture of the onion when it is chewed and swallowed. We might even learn that onions taste bad when eaten raw and by themselves, but taste good when eaten on a hamburger.

Indirect experience occurs when we don't experience something personally and directly, but rather, learn about it second hand or indirectly. We have never eaten an onion, but friends tell us about how it tasted when they actually tried an onion. We read about how an onion tastes or we see someone eating an onion on

television. Just like with direct experience, when we are indirectly experiencing the onion by hearing about it or reading about it, we are drawing conclusions and forming beliefs about the onion.

Attitudes and opinions based on direct experience are stronger than attitudes and opinions based on indirect experience, because in the case of direct experience attitudes, we absolutely know the onion tasted good or bad, because we actually put the onion in our mouths and chewed it and we know exactly and precisely how it tastes--there is no question in our minds. In the case of indirect experience, our opinion about the taste of onions is not as strong as the opinion based on indirect experience, because while we think we know how an onion would taste, since we did not experience it personally, we do not have that inner experience of knowing exactly how the onion tastes--we are less sure of our opinion and are susceptible to changing our opinion or attitude. My friend told me that onions tasted bad, so I formed the opinion that onions taste bad because I trust my friend's judgment, because, after all, he is my friend. However, if my wife comes along and tells me that raw onions, by themselves don't taste very good, but when they are sliced and put on grilled hamburgers they taste pretty good, I might be willing to change my belief. If I trust my wife more than I trust my friend, then I may change my attitude about the taste of onions. Thus, attitudes based on direct experience are generally stronger and less susceptible to change based on a persuasive appeal.

Sometimes, attitudes based on indirect experiences may almost rise to the level of direct experience due to the source of the indirect experience. I may not have experienced a permanent soft tissue injury, but my father has directly experienced such an injury. I have known my father before and after the injury and I know he has an injury, that it is permanent, and that he suffers from the effects of the injury. Since my father is not a complainer and is honest, I believe his accounts of his injury. I have personally watched him suffer from his injury. Although I have not directly experienced the soft tissue injury, it is almost as if I have directly experienced the injury, because since I am so close to my father, I know that the injury occurred and exists.

IMPLICATIONS OF DIRECT EXPERIENCE IN JURY TRIALS

The strength of direct experience verses indirect experience has several important implications for the jury process, and in particular, voir dire. First, jurors who have directly experienced an issue in the case may have formed strong attitudes about that issue. If the key issue in the case is whether the plaintiff's soft tissue injury is permanent, those jurors who have personally experienced soft tissue injuries will have stronger opinions about soft tissue injuries based on those experiences. A person who has suffered from a soft tissue neck injury sustained in an automobile collision 10 years ago, will believe that people can and do get permanent soft tissue injuries from automobile collisions. A juror with a direct experience such as this will be less susceptible to the defense suggestion that the plaintiff's injury should not have lasted more than six weeks and is not permanent.

Given that opinions based on personal experience will be stronger than those based on indirect experiences, it is absolutely critical that, as trial lawyers, we are aware of how the jurors' personal experiences could relate to the issues of our case and that we specifically ask jurors about their personal experiences with the issues in the case. If the issue is whether the plaintiff's soft tissue injury is permanent, we will want to ask all jurors who have experienced a soft tissue injury to identify themselves, and then we will want individually discuss the injury with each of them. We will want to ask them questions such as, what caused their injury, what kind of medical treatment they received, whether or not their injury healed or are they still suffering from the effects of the injury, do they feel that the injury is permanent, does it cause pain and limitation, and how does it affect their daily lives.

Thus, whether it is the issue of whether a soft tissue injury is permanent, whether a doctor should be held responsible for malpractice, or whether police officers testify falsely, we must discover the jurors' experiences with these issues. A juror who has experienced medical malpractice personally will be open to hearing a plaintiff's claim while the wife of a doctor who has had to defend against malpractice claims will not be open to hearing such a claim.

It is also important that we question jurors about the experience of their family

members because in these cases although the jurors may not have had direct experiences with malpractice, their spouses, children or parents may have had direct experiences and these direct experiences of the jurors' loved ones may cause their indirect experiences to rise to the level of direct experiences. A person who has watched while a close relative was victimized by the negligence of a doctor who would not admit fault and who tried to cover up their acts may feel just as strongly about the issues of malpractice as if they themselves had experienced malpractice first hand.

Once we know the jurors' experiences, we may want to get commitments from those jurors with experiences that may adversely affect our case that they will not go against the evidence and the law just because of their personal experiences. For example, in a medical negligence case, a doctor's wife could be asked if she will put the plaintiff to a higher degree of care than that required by the law just because of their personal experiences. They should be asked, "If we prove our case, that is, that the defendant was negligent, and that his or her negligence damaged the plaintiff, if we prove we are entitled to a verdict, will you be able to put your experiences aside and return a verdict for the plaintiff?"

Conclusion

Discovering jurors' personal experiences during voir dire is necessary in order to help us determine how the jurors will decide our case. Knowing these personal experiences will help us decide which jurors to strike or keep on the panel and will help us decide what appeals to make during the trial.