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Where Do We Go from Here? *Juror Attitudes and The Pandemic*

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It's already a cliché, but it's true: this pandemic is the most profound event we have seen in our lifetimes. It is a "before" and "after" moment, and it is changing everything.

The following observations are based on my personal belief that we are far, far away from anything resembling "before" in our daily lives, and that **anything anyone predicts today may be wrong tomorrow**. Our situation changes daily. We can only know the questions; we cannot yet know the answers.

I'd be happy to be wrong, and we will know more as the summer unfolds and we attempt to *open back up*, but with 100,000+ Americans dead and millions more infected, with 41,000,000 Americans^[1] out of a job, with the fact that the virus has become so deeply infected with politics, and with the long-term disruption of significant segments of the economy just beginning, the virus WILL impact how

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Some jurors will be reluctant to come to court for trials. I am concerned that in the near-term jurors who are typically plaintiff-friendly (well-educated, liberal) seem to be the ones most concerned about exposure to the virus (e.g. most likely to wear masks and to self-quarantine). Those people may be the most likely to ask to be excused from service (or not show up). We would then end up with a lot of “deniers” and “personal responsibility” people who won’t wear masks and who are typically pro-defendant.

It feels to me like we are collectively working through the classic stages of grief or loss: denial, anger, bargaining, depression, acceptance. Some people are stuck on denial or anger, their opinions will be volatile as circumstances change. How will a “denier” pivot when their spouse becomes infected? To what will that anger be directed?

The scope of what jurors think of as a frivolous case will expand. We will be asking a lot of jurors to come into our courthouses to do their service; some will think of it as a significant risk to becoming ill. Your case better have significant damages and a meaningful liability principle before you ask them to do that. It’s worth noting that because plaintiffs are usually seen as the party responsible for having a trial, we will have to polarize the jury by demonstrating that “the reason we are here is because the defendant won’t accept responsibility for what it has done.”

Will those most affected be the most sympathetic to the loss of others? Or will anything less than a catastrophic injury seem insignificant? Will we see more of the “I got sick and nobody paid me anything” attitude that some use to justify defense verdicts or low awards, or will jurors be more open to “feeling the pain” of those unnecessarily injured?

Will medical providers be angels or the devil? This is likely to be a highly individual response. Did the medical system save Grandma, or fail her? Police were heroes after 911 but the tide has turned significantly.

"If jurors see no direct benefit to them from the decision they will make, they will find the indirect

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beliefs about their world and themselves

I don't know that what's coming is necessarily bad for plaintiffs. Historically, economic downturns have seen a decrease in personal injury verdicts. But verdicts are often products of fear or anger, and there is an unprecedented amount of both right now. I think it is safe to say that verdicts will rise and fall depending on who the defendant is, and what they did wrong. As always, the moral fault of the defendant will be the issue. "Accidents" will be forgiven, but injuries caused by avoidable events will be punished, especially by those who believe that this pandemic was in part avoidable if those in power had "done their job."

There has never been a time when it is more important to think about your case in terms of how jurors are feeling *right now*. Trial lawyers can't be in denial. We must accept that the old world is changing by the day and we must learn how to adapt our clients' cases to meet the jurors where they are now, not where they were in February 2020.

Now is the time to test your case with interactive focus groups! Please [contact me](#) to discuss your virtual options; we have been doing these with great success.

[1] and a world that has just started to deal with this – most of the world's population is defenseless against this, has little or no access to advanced medical care, and can't "lock down" its population without starvation and economic disaster.

Will you be participating in the AAJ (Virtual) Annual Convention?

Jeff will be Co-Chairing
the Jury Bias seminar.

