

DAMAGES: SYMPOSIUM PRESENTATION OF IBIERE SECK

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ATTORNEY IBIERE SECK:

I am going to take a moment because I need to catch my breath. The reason I need to catch my breath is because we have not met before. It is a pleasure to meet you, [Professor Chamallas]. I did not even know you were going to give this talk. Your remarks, your study on this issue is so very important, and it is important because it affects so many people. And it is deeply personal to me. So, as you were talking about informed consent and Serena Williams, I thought back on my own personal experience as a mother giving birth to my children and what I went through. I nearly died. I nearly died in childbirth, and I had in my mind this last couple of days what I was going to talk about today. And this ties into [Professor Chamallas's] talk. What I came here to talk about are human harms and losses.

So, this is very theoretical. I was not on law review during law school. I have never written a law article. I am not a professor. I am not a judge. My job is simple, but also so very challenging. And it is challenging because I am tasked with telling the stories of people who have suffered human harms and losses. What we are doing here today is talk about the law, which I think is also very important. But when you are in the courtroom, so little of what happens in the deliberation comes down to [the letter of the law]. The decisions people make come down to people's personal experiences, their own biases, their own prejudices, their own hopes, their own dreams. I am listening to every single topic [that comes up during jury selection]. At the core of what I am listening for is what makes what happened to my client relevant, how does it affect humans and the human condition, how does it affect people.

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When you [Mr. Behrens], are talking about pharmaceutical companies, I am thinking: “How would I argue that case?” When you, [Professor Chamallas], are talking about the mother who can no longer give birth, I am thinking about how to appraise the value of her losses. What is that worth and how would I make that argument? That time is so precious, and everything that could have happened is gone. Every single time that woman sees a child, she is triggered.

What I am constantly asking myself is “how do we apply what you all are thinking about, considering, and studying [in law school] in the courtroom?” It starts not with the law. It starts with the people who come into the courtroom to be selected as jurors.

I try cases, exclusively. I spent the first two years of my career doing primarily civil rights and had great training. I handled a lot of interesting cases, but the thing that I wanted to do more of was to try cases. And the reason I wanted to try cases is because I wanted to be able to share human stories. For the last five years, that is what I have actually been doing. My clients are not people, so to speak, they are other law firms.

As trial lawyers, what we are doing is putting a value on something that we have never had to put a dollar amount on, right? Things such as pain, suffering, disfigurement, loss of comfort, loss of love, loss of society, loss of support. The things that most people would be astounded if you ask them, “What would you take if I told you the woman you fell in love with when you were fourteen years old was taken from you for the rest of your life? What is that worth?”

My job is to open peoples’ minds enough for them to consider what that is worth. Not as if you are handing someone something. That is not a handout. You are not winning the lottery by asking twelve people to just be open to talking with one another about appraising the value of someone’s human experience, joy, and their hopes.

I think any injury that takes away your life, your liberty, or your happiness is a catastrophe. It is very difficult to talk about someone’s trauma. I once represented a child who grew up in a home where there were six other siblings, one mother, and one father [living] in a neighborhood where just walking out of your house is potentially catastrophic. This beloved teacher eventually molests that child. From that point on, that child’s life has changed. But there are some jurors, some people, maybe some defense attorneys who might argue that the child had a pretty rough life already. [They would ask]: “What were the chances that that child would have walked out of their home and been [attacked] by strangers?”

“What are the chances that child would have suffered some sort of emotional, psychological injury just because they were raised in a house that was dysfunctional, perhaps drug-infested?”

My job is to show that an injury can be devastating even if someone is [already] susceptible [to injury]. And I need to find twelve people who are vulnerable enough to consider that.

So, what I like to do in my cases is I like to pick great jurors. This is the thing that most attorneys struggled with. They struggle with this because you cannot put a dollar amount on these things, and jurors get to decide [the dollar amount].

I do something we call anchoring.¹ Anchoring is when you have no concept of what something is worth. So, you give people examples.

Every single day we appraise. We appraise our home; we appraise our things. We put a value on things all the time. There are a number of examples that I use. It is about finding specific things. We then tie that to what we deal with every single day to help people understand that putting money on the loss of enjoyment of life, physical impairment, grief, anxiety, and humiliation is something they are equipped to do.

[For example,] There is an extravagant, military-grade airplane that is worth billions of dollars, built by people in the military who design these very advanced airplanes. In [the aircraft], there is a button that can be pushed. If something goes wrong in the air, the pilot is trained to think of nothing else other than his life. That means that billion-dollar plane is worth nothing compared to that [pilot's] life. If something goes wrong, you eject. You give an example like that.

I am here to hopefully to encourage you to consider taking your legal knowledge to the next level. I hope that you challenge yourself to consider telling a story. Every day, I am interacting with strangers, and I am trying to find commonality. I hope that you will do so as well.

Thank you.

1. See Tom Spiegler, *Does Anchoring Work in the Courtroom?*, THE DECISION LAB (May 6, 2020), <https://thedecisionlab.com/insights/policy/does-anchoring-work-in-the-courtroom> [<https://perma.cc/6752-PYKB>].