



**A Word to Accident Attorneys about Snatching Defeat (In a Personal Injury Case)
from the Jaws of Victory: in Other Words, Losing an Accident Case
That You Were on the Verge of Winning.**

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On October 28, 2009, I heard a true story of an actual personal injury trial held in the Bronx. This story is about an injured plaintiff - a bus passenger hurt in a bus accident - who lost her case; which she shouldn't have lost. I wasn't able to stop thinking about this personal injury lawsuit until I wrote about it and got it off my chest.

The injured plaintiff was represented at trial by my good friend, let's call him "attorney P." Attorney P. has been representing injured plaintiffs for some 25 years and has the gray hair to prove it. Attorney P. is a good lawyer. Well-spoken, bright and articulate, I would trust attorney P. to try any personal injury lawsuit, anywhere.

This trial was held in New York State's Bronx County, which has a reputation of being perhaps the most plaintiff-favorable place in the United States to hold the trial of a personal injury case. This means that we personal injury lawyers believe that the good citizens of the Bronx who serve on juries give fair and generous awards to our hurt clients. So far, so good.

The plaintiff was an African woman, not African-American, but African. She was a New York Transit Authority bus passenger injured when her bus stopped short to avoid hitting another vehicle, which we'll call the Allstate vehicle. As a result of the accident, the injured woman suffered various bumps and bruises but, primarily, a frozen right shoulder with limitations on her ability to use her right arm.

Attorney P. was up against two young lawyers. One from the N.Y.C. Transit Authority, and one from Allstate's chosen law firm. The best settlement offer made to Attorney P. was \$15,000 from each defendant, for a total of \$30,000, which was utterly inadequate to fairly compensate the injured woman. Attorney P. had no choice but to try this accident case all the way through to verdict.

The six-person jury looked good to attorney P., five women and a man. One of the women was even an African woman, as was the injured plaintiff.

The two young defense lawyers spent much time attacking each other on the question of "fault" or "liability" or, put simply, "Who caused the accident." Attorney P. and his client were mostly bystanders for this portion of the trial, because the injured woman was a bus passenger and in no way at fault for the happening of the accident. Whether the bus driver or the driver of the Allstate vehicle or some combination of both was found at fault by the jury, the hurt plaintiff could still recover a verdict awarding her money.

Part of the trial addressed the issue of the injured woman's damages. The hurt plaintiff testified

very well and convincingly to the jury. Attorney P. then brought in the woman's medical doctor to talk about her frozen shoulder (which cost him \$5,000). The doctor had recommended that the plaintiff have surgery for that shoulder, but she was afraid to undergo surgery.

The defense medical doctor had only examined the woman once, and attorney P. made short work of his opinion that attorney P.'s client was not really hurt. The defense also brought in a neurologist (doctor) who testified about the woman's back and neck injury but would not address her shoulder injury because it was outside the neurologist's area of expertise; so the neurologist deferred as to the injured shoulder to the testimony of the defense orthopedic doctor - whom attorney P. had beaten up fairly convincingly when he testified.

Attorney P. was of the opinion that the week-long trial was going well for his client. The jury retired from the courtroom to deliberate. Being allowed to ask questions of the judge, the jurors requested to see Attorney P.'s chart or graph that he had displayed during his closing argument to the jury, whereby he justified asking the jury to award his client, the hurt plaintiff, \$1.3 Million Dollars. Correctly, the trial judge would not allow the jurors to examine this chart or graph because it was not in evidence. It should not shock you to hear that attorney P. was very happy to have the jury make this request. Like the Christmas poem where "visions of sugarplums dance through the childrens' heads," attorney P. had visions of a possible million dollar jury verdict and award to his client dancing through his head.

A few hours into the jury's deliberations, the jury requested and was granted a bathroom break. Ten minutes after the jury finished in the bathroom, the jurors concluded their deliberations and returned with a verdict finding no injury to the hurt woman, and awarded her zero dollars (no money). Needless to say attorney P. went into a mild state of shock. He called me right afterward from the outside steps of the Bronx County Courthouse to tell me this story.

"This could only happen to me," started my old friend attorney P. I asked him what happened, and was told the story that I have so far written here. Apparently, most of the jurors practically sprinted from the courtroom after their verdict, but attorney P. managed to catch two or three to talk to. (The trial being over, attorney P. was ethically permitted to talk privately to the jurors). "What happened?" asked attorney P.

The jurors complimented attorney P. on conducting a skillful trial and an effective presentation of his client's case. But during the bathroom break, attorney P.'s client went into the ladies bathroom at the same time as the five female jurors. And the injured woman with the frozen right shoulder and almost useless right arm turned the handcrank on the side of the wall-mounted paper towel dispenser to get paper towels to dry her hands. Now the Bronx County Courthouse, being fairly old, has paper towel dispensers that require almost superhuman strength to operate. Which attorney P.'s client did. With her bad shoulder and arm. The jurors, who were right there, came to the immediate conclusion that attorney P.'s client had lied about her injuries under oath, in open court, while on the witness stand, and had exaggerated her injuries, if, in fact, she was injured at all. So, basically, the jury threw her out of court. This, even though they told attorney P. that they did not think that he was part of what they could only see as a scam or fraud by attorney P.'s client.

What are the lessons here?

FIRST: When a personal injury plaintiff is on trial, he or she is always under a microscope. Something like what happened in this case, or a jury seeing an injured plaintiff running to catch a bus home in the middle of a trial, can destroy a personal injury lawsuit.

SECOND: Keep your client away from the jury. Have your client think of the jurors as radioactive. Going to the bathroom with the jurors present was a huge mistake. Hurt personal injury clients have been known to say things: in bathrooms, elevators, staircases and such, that damage their claims.

THIRD: Sometimes the lawyers have less to do with the success or failure of a case than they think. Undoubtedly the lawyers for the Transit Authority and the Allstate-insured vehicle thought they won due to their brilliance in the courtroom. Never having spoken to the jury as did attorney P., they'll never know how lucky they were. And attorney P. never saw this defeat coming, it's one of these things you just can't plan for. Attorney P. was blind sided.

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