

RESOLUTION 11-10-2003

DIGEST

Civil Jury Instructions: Believability of Witness

Amends Book of Approved Jury Instructions—Civil Instruction No. 2.20 to instruct the jury that it may not base a credibility determination on personal bias.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

None known.

Reasons:

This resolution amends Book of Approved Jury Instructions—Civil Instruction No. 2.20 to instruct the jury that it may not base a credibility determination on personal bias. This resolution should be disapproved because it is overbroad and could create confusion with the other provisions in this instruction.

Book of Approved Jury Instructions—Civil Instruction No. 2.20 informs the jury that they are the sole and exclusive judges of the credibility of the witnesses. This resolution adds language to instruct the jury that it may not base a credibility decision on any bias, prejudice or preconceived ideas about a witness based on the witness’ color, race, religion, national origin, ancestry, age, physical or mental disability, gender, sexual orientation, sexual identity or socioeconomic status.

The instruction does allow jurors to consider a witness’ “ability to remember or to communicate.” However, some of the characteristics this resolution instructs the jury against relying upon, i.e. , age, physical or mental disability, may have a bearing on those abilities. Also, jurors are expected to bring the sum total of their life experiences to jury service. Those life experiences may involve interaction with persons having the enumerated characteristics. A juror should be able to apply the *totality* of his or her life experience to the deliberative process.

In addition, this resolution might confuse the jury. The instruction, on balance, tells the jury what it *can* do. This resolution would add language telling the jury what it *cannot* do. If this concept is to be added to jury instructions, it should be by a separate instruction that more clearly explains why jurors should not be biased *solely* by one of the enumerated characteristics.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that the Committee On Standard Jury Instructions, Civil, of the Superior Court Of Los Angeles County, amend Book of Approved Jury Instructions—Civil, Instruction No. 2.20, to read as follows:

- 1 No. 2.20
- 2 You are the sole and exclusive judges of the believability of the witnesses and the weight to
- 3 be given the testimony of each witness.
- 4 In determining the believability of a witness you may consider any matter that has a
- 5 tendency in reason to prove or disprove the truthfulness of the testimony of the witness, including
- 6 but not limited to the following:
- 7 The demeanor and manner of the witness while testifying;
- 8 The character and quality of that testimony;

9 The extent of the capacity of the witness to perceive, to recollect, or to communicate any
10 matter about which the witness testified;
11 The opportunity of the witness to perceive any matter about which the witness has testified;
12 The existence or nonexistence of a bias, interest, or other motive;
13 A statement previously made by the witness that is [consistent] [or] [inconsistent] with the
14 testimony of the witness;
15 The existence or nonexistence of any fact testified to by the witness;
16 The attitude of the witness toward this action or toward the giving of testimony;
17 [An admission by the witness of untruthfulness.]
18 [The character of the witness for honesty or truthfulness, or their opposites.]
19 [The witness' prior conviction of a felony.]
20 In determining the believability of a witness you may not consider any bias, prejudice or
21 preconceived ideas that you may have about any witness based upon the witness's race, color,
22 religion, national origin, ancestry, age, physical or mental disability, gender, sexual orientation,
23 sexual identity, or socioeconomic status. You must set aside your bias, prejudice, and preconceived
24 ideas and consider only the evidence presented.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Instructs jurors as to factors that may be considered in evaluating credibility of a witness. Although courts have recognized that a jury commits reversible error when it evaluates witness credibility through the lens of racial bias, there is no jury instruction to that effect.

This Resolution: Instructs jurors to set aside their own preconceptions about the witnesses and to look only at the evidence before them. This resolution would invite jurors to consider the existence of pre-existing biases, their own and other members of the jury, and instruct them that it would be improper to rely on such prejudices when evaluating credibility.

The Problem: Although educational efforts and public discussions have reduced use of derogatory terms and the overt expression of bias, prejudice continues to exist throughout California.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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