

Editors Note: We were contacted by Neal Feigenson to see if our readers had experiences with the practice issue described below. Please help out by commenting below the query!

Query for The Jury Expert: Tinnitus audio exhibit admitted as evidence

In *Janson v. J.D.O.R.A.P., Inc.*, a case tried in Connecticut in spring 2011, the plaintiff claimed to be suffering from tinnitus and other hearing impairments after a tire that a custom auto shop had sold him exploded as he was checking its bolts. The plaintiff's trial lawyer, Antonio Ponvert III, and one of the plaintiff's expert witnesses, an audiologist, presented to the jury a sound file that, the expert testified, corresponded to the tinnitus sounds that the plaintiff more-or-less continuously heard. The sound file was based on the data the audiologist had collected from his standard psychoacoustic testing of the plaintiff. Jurors took turns putting on headphones and listening to the sounds. The exhibit also went to the jury room, where some jurors chose to hear the sounds again. The jury awarded the plaintiff \$1.5 million for permanent acoustic damage and suffering, including loss of hearing in one ear, loss of high-frequency hearing, and reduced sound tolerance, as well as tinnitus in both ears.

The audio exhibit in *Janson* is unusual because demonstratives are, of course, typically introduced to depict or explain something in the real world that can be objectively known, not something that occurs or occurred only in the party's mind (the tinnitus in this as in most cases being entirely subjective). I am aware of at least one case in which a demonstrative was admitted to show a party's subjective visual (mis)perception (see *The Jury Expert* 22(1) 46-53 (January, 2010)), but the computer animation in that case was admitted only as illustrative evidence and was based entirely on the witness's recollection. The demonstrative in *Janson* was based on the audiologist's scientific knowledge and data and was admitted as substantive evidence (after the Connecticut version of a *Daubert* hearing).

I am interested in learning if any readers know of any similar exhibits being offered or admitted in other tinnitus cases, or of any other attempts to create scientifically based, computer-generated simulations of other subjective experiences. I'd be grateful for any help you can provide.

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