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LITIGATION

Focus Groups Identify New and Influential Force in Jury Box

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TRIAL GRAPHIX.

In their halcyon days before the dotcom crash and Sept. 11, male yuppies as jurors were generally unsympathetic to have-not plaintiffs and receptive to corporate defendants. Today, however, mock jury focus groups nationwide show that those who have lost their jobs and solid portfolios now feel more like victims than winners. And as jurors, they are turning their sympathies and allegiance to others with whom they can identify – plaintiffs – and away from corporations.

In a focus group in a recent fraud case in New York, for example, a juror formerly employed in the investment field commented on the corporation's knowledge about its employee's wrongdoings by saying, "As long as that person made money, the company would react with a wink and a nod." The juror was not alone in his assessment: national research shows that 70 percent of those eligible for juries felt that corporate executives will distort the truth or lie in court to keep their company out of trouble.

This kind of new pro-plaintiff juror is also keen to giving big awards to plaintiffs, as in a securities fraud case in New York in which a young male mock juror succeeded at raising the amount of damages – already perceived by other jurors as large – by exclaiming, "Are you kidding? To a company that size, that's chump change!"

The young male juror is also more influential in jury deliberations than the traditional plaintiff juror, who was typically undereducated, underemployed, unempowered, female, and a member of a minority group. These new jurors not only come with zeal and a grudge; they are better educated and more articulate.

As with any juror, however, the key to the male, upwardly mobile jurors' mindset is their worldview, determined not only by their experiences, but more importantly by their reactions to those experiences. The essential quality to assess in a prospective juror is not whether they have been victimized, but whether they see themselves as victims.

Control and Responsibility

Social science research opens a window into yuppie jurors who identify with being victims. Responses to certain types of questions may reveal where one falls on a psychological scale that measures how people view control issues in their lives. Some people believe they have little or no control over the outcomes of their actions, that luck rather than their own actions, work or choices - determines their fate.

Believing they are powerless, these individuals, such as today's young professionals who feel victimized, may take

less individual responsibility, realize the need to depend more on others than on themselves to take care of them or protect them, and blame outside forces and other people when things do not go as hoped.

Scales, such as the one developed by the noted psychologist J.B. Rotter, have been developed to measure people's worldview on this dimension, known as locus of control. Rotter's scale asks, for example, whether people attribute their unhappiness to internal forces such as their own mistakes, or to external ones such as bad luck; and whether they view success as a matter of hard work or being in the right place at the right time.

Before the dotcom crash, the decline in the economy post-9/11, and loss of faith in such solid institutions as the New York Stock Exchange, many potential jurors may have responded to the Rotter scale questions one way; on second thought, and since their own lives and worldviews may have changed, their responses may have changed as well.

This shift may be of particular concern, given the emergence of litigation resulting from shareholders and others who believe they are victims of financial or securities frauds. In this climate of investor-related lawsuits, it is important to revisit and test how powerful young professional jurors have shifted from their traditional allegiance against powerless victims in David versus Goliath cases, to joining forces with them.

In recent personal injury, product liability and environmental contamination cases, young professionals who were once high-powered corporate insiders, regularly decry corporations' resistance to regulatory requirements, claiming that all the companies really care about are bottomline profits, not consumer safety.

What makes these jurors especially potent is that, unlike traditional pro-plaintiff jurors who speak largely from emotion and opinion, these individuals can refer to inside, professional experience and facts which elevates them to experts in the jury room.

In cases where both sides are potentially powerful, but only one claims to be a victim, it is unclear where the young professionals' allegiance will go. Two key issues to explore are: Has the juror experienced a hardship? And how does the juror view what happened?

While trauma leads some individuals to identify with victims, others refuse to be - and thus have little tolerance for a victim. The question often missing in voir dire is the follow-up: "How did that affect you?" or "How do you feel about it?"

For example, one person forced to retire early may resent it, while another may view the experience as a blessing in disguise. These two individuals are likely to react quite differently as jurors: one sees their former employer as a “zero” and the latter as a “hero.”

Holding Sway in Deliberations

Ongoing studies being conducted to validate how people view control over their lives also explore the impact of demographics and socioeconomic status. These studies continue to provide a broader understanding of how people from different social strata and worldviews may react as jurors.

Reasons why pro-plaintiff young, male professionals, those who identify with victims rather than defendants, are likely to carry disproportionate influence in jury deliberations come from a variety of such studies. Social researchers David Marcus, Phillip Lyons and Michelle Guytonon found that jurors who disagreed with each other rated extroverted, tall men as the most influential to the deliberating jury. In addition, in mixed gender groups, such as is typical in juries, men are perceived to be more influential than the women, according to an analysis done by psychologists Makhijani Eagly and B.G. Klonsky.

Since discussion is the medium by which verdicts are reached, important differences in how different types of jurors converse are also worth noting. For example, numerous gender studies reveal that men are more likely than women to interrupt, dominate conversations, speak more assertively and be chosen as leaders.

In addition, psychologists Roy and Judi Eidelson found that jurors’ core beliefs relating to superiority, injustice, vulnerability, distrust and helplessness have been identified as major factors in shaping their conclusions. People feel stronger identification and allegiance toward their group when they share feelings of injustice, add psychologists M.B. Brewer and R.J. Brown. If so, what is the cumulative effect of having more than one disenfranchised, yet empowered individual, on a jury?

No matter how bright jurors may be, or how capable of understanding the facts and expert testimony put before them, their bias accompanies them into the jury room and is likely to eclipse counsel’s logic and even the evidence if the opposing party’s position strikes a chord of injustice to such jurors.

According to the Eidelsons, people generally use stable thinking that produces regularities in expectations and interpretations of events. Unless dramatically challenged, data and feedback that go against someone’s core belief typically either escape notice altogether or undergo

reframing to be consistent with preconceptions.

Young male professionals, once impervious to injustice but who now believe they have been mistreated, may join the ranks of jurors who feel they have suffered an injustice. Jurors often apply a moral, rather than legal, standard to judge a case. Individuals with such a mindset may interpret something as being unfair as sufficient criterion to meet such a standard.

Research by J.S. Cecil, E.A. Lind and G. Bermant has also shown that jurors in longer trials are less likely to have a college education or specialized knowledge relevant to the case than jurors on shorter trials, whether because they succeed at being excused by the judge or eliciting a peremptory strike.

All things considered, male jurors in particular are perceived as more effective and may tend to carry more sway than others on juries. But what if they are also angry, articulate, and have enough free time on their hands (if unemployed) to serve as jurors on longer trials where the stakes tend to be higher?

With rapidly declining confidence in corporate, political, and financial institutions – and a wider pool of candidates as a result of stricter laws regarding jury duty obligations – the new young, male professional juror has emerged as a force with which to be reckoned. With that in mind, defense attorneys would be well advised to question old and once-reliable methods in jury selection, take nothing for granted, and proceed with caution.

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