

Assessing Juror Stereotypes: Myths and Realities

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Introduction

We all categorize people in our everyday lives; it is one of the ways we are able to cope in a complex social environment. These generalized “stereotypes” develop over the years, and they do so through experience, the family environment and the broader socialization process. Frequently, without even realizing it, we subconsciously categorize things, events and, of course, even people. We do this in part to make sense of the large body of stimuli we are bombarded with on a daily basis. It is a coping mechanism that helps us make sense of and helps us interpret what is going on around us.

While it is not possible to completely avoid stereotyping people in everyday life, it is essential to move beyond generally accepted stereotypes when selecting and arguing before a jury. Biases and stereotypes can emerge quite poignantly when a trial lawyer is facing a group of laymen for jury selection. However, commonly accepted stereotypes can be misleading, or worse, simply wrong.

The goal when dealing with a jury is to get beyond simple assumptions and evaluate jurors based upon criteria that can tell you more about them, strengthening your decision making processes. In other words, if you are choosing among several jurors – all of whom seem bad for your side – how do you detect the “worst” among them? What characteristics do you look for? Who must you avoid? And equally important, once you have a jury impaneled, how do you craft the tone and content of your arguments to “pull in” those jurors that you fear? And finally, how do you arm your jurors with the correct facts and arguments that can sway their fellow jurors?

The key to success in the jury selection process often lies in carefully crafting questions to get essential information, and in listening carefully to the jurors and to your opponent. Being armed with the necessary

information to make informed judgments can make the difference between winning and losing. Being guided by misinformation or commonly held myths can lead to undesirable surprises.

The purpose of this article is to summarize what SLR’s cumulative data on surrogate jurors shows about the relationship between certain juror characteristics and individual verdict preference. We then discuss how trial lawyers can use this information when choosing a jury panel, and then in arguing that case to the selected panel.

For ease of reading, the sections below are divided into several categories. The first section presents an analysis of the SLR mock juror database for patterns in individual verdict preference among demographic, lifestyle and attitudinal variables. This section focuses on explaining how some common pre-established assumptions about certain groups may be realities, and some may be simply myths.

The second section discusses personality characteristics of potential jurors and why unearthing the social and personal values of potential jurors is critical when selecting a jury and arguing your case. While most discussions about jurors tend to focus on demographics, as jury consultants, we believe that it is the basic value system of each individual juror that truly drives their decision making process. This focus on individual values goes against the grain of the very definition of “stereotype” which means, according to Webster’s Dictionary, “lacking originality or individuality.” Scratch the surface of almost any juror, or judge, in any case and you will find individual value systems that pervade that individual’s decision making process.

We conclude this paper with comments on what this means for trial lawyers in the courtroom, for *voir dire*, jury selection and case presentation.

Our Resources

The data in this paper reflects information collected by Strategic Litigation Research from hundreds of mock jury exercises conducted in every region of the country

- from Boston to Miami, from New York to San Francisco, from Minneapolis to Brownsville, Texas. The data includes urban, suburban and rural mock jury participants.

The data covers a wide range of case types. However, we have combined our data into four basic categories for comparative purposes: Personal Injury, Product Liability, Intellectual Property, and “Business” cases (which include breach of contract, bad faith, anti-trust, etc.). For the sake of this analysis, a case may be in more than one category. For example, personal injury and product liability overlap significantly, as most product liability cases involve some type of alleged injury or wrongful death.

This article compares the demographic, lifestyle and attitudinal data to the verdicts that surrogate jurors ultimately register before deliberations. It is important to note that the outcome of the deliberative process is not included in this data. Rather, we are looking at where individual mock jurors stand on a case before heading into the jury room.

Plaintiff-orientation is defined as the percentage of any group of participants that individually found for the plaintiff. Defense-orientation is simply the inverse of this percentage, and therefore, this metric can be used to find both very plaintiff-oriented groups (higher percentages) and very defense-oriented groups (lower percentages). For ease of reading charts, “larger bars” are groups that benefit the plaintiff, and “smaller bars” benefit the defense. Among all participants in all cases, plaintiff-orientation was 55%, meaning 55% of all mock jurors cast verdicts for the plaintiff.

The SLR database tracks verdicts from actual mock jury exercises, each case consisting of different stimuli in the form of themes and fact patterns. This variation in stimuli tends to mask finite distinctions in the data, but allows for overall patterns and trends to emerge. In other words, the results do not show dramatic differences between groups, but instead they show small differences over a wide range of demographic and attitudinal variables.

Two important conclusions can be drawn from the data in general. First, the attitudinal variables that we have included in this article are almost always more predictive of plaintiff or defense-orientation than demographic variables. Second, none of these attitudinal or demographic trends apply to every case. Ultimately, determining which personal attitudes or demographics apply to each unique set of case facts is an art, not a science.

Realities and Myths: Three Common Stereotypes

Many biases and stereotypes that we develop over the years turn out to be true, while others turn out not to be true. Since we accept and sift through information consciously and subconsciously, often times information may “seep” through that turns out to be an exaggeration. Sometimes our information is simply out of date.

In looking at our data, many stereotypes do in fact prevail when we consolidate all of our mock juror data across all case types. However, some accepted stereotypical “truths” prove false when placed under closer scrutiny. The following section reflects some information that supports, or rejects, three commonly accepted stereotypes used in jury selection.

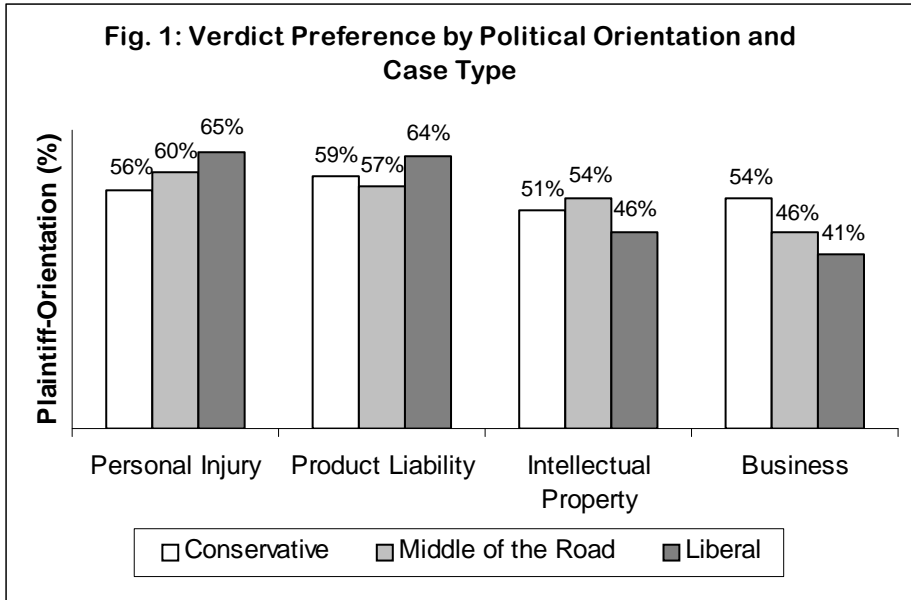
Stereotype #1: Conservative jurors are more defense-oriented than liberal jurors.

A common stereotype in selecting juries is that people who are politically “conservative” make good defense jurors. We have heard litigators say that they like to ask potential jurors who they voted for in the last two presidential elections. If the prospective juror voted for Gore or Kerry, these lawyers feel that this juror is a “slam dunk” for the plaintiff. These lawyers also state with certainty that if a juror voted for Bush, then that individual would be a defense juror.

Except for certain types of cases, our data does not support this assumption. In fact, our analysis shows that across all types of cases, 58% of mock jury participants who identify themselves as “very conservative” are predisposed toward the plaintiff, while only 50% of the individuals who identify themselves as “very liberal” are predisposed in favor of the plaintiff. The data seems to suggest, depending on the circumstances, that searching for conservative jurors can actually be a very dangerous strategy for the defense.

Political orientation as a predictor of verdict preference is complicated when taking case type into consideration. In personal injury cases, liberals and moderates do favor the plaintiff more than conservatives. In product liability cases, while there is no clear profile, moderates are slightly more favorable to the defense. When looking at business and intellectual property cases, conservatives are much more plaintiff-oriented than liberals (see Fig. 1).

When we look at political orientation by gender, the situation becomes even more confusing. Among



males, we see a slight trend in that very politically partisan individuals, regardless of whether they are conservative or liberal, are better for the defense. Among females, partisans on either side of the aisle are more plaintiff-oriented. In any case, however, the data shows that all of the trends surrounding political orientation are weak, and at times contradictory. Simply put, there is no clear pattern by which political orientation could be used to predict a juror's verdict preference.

Stereotype #2: Minority jurors are more plaintiff-oriented.

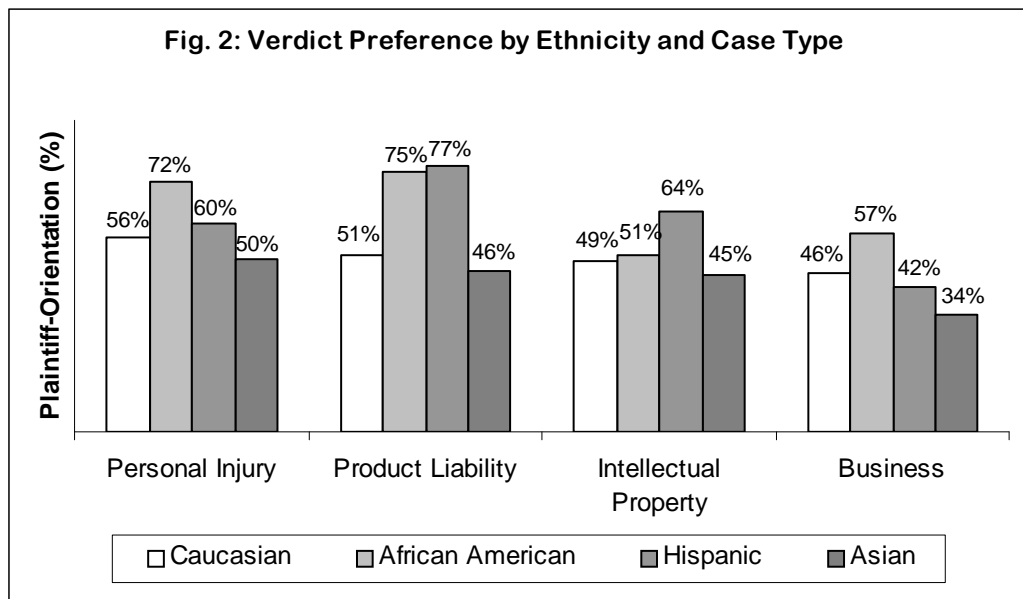
This stereotype is part reality, part myth. The findings from our data confirm some stereotypes regarding ethnicity and verdict preference and challenge others. Across all case types, African Americans are more plaintiff-oriented, with 66% finding for the plaintiff. However, Hispanic plaintiff-orientation, at 54%, is nearly consistent with that of Cauca-

sians, at 52%. Asians are the least plaintiff-oriented group, at 43%.

Hispanic verdict preference varies widely by case type. In product liability cases, Hispanic mock jurors are more plaintiff-oriented than African Americans. However, in business cases, they are more defense-oriented than Caucasians. Aside from intellectual property cases, African American mock jurors are typically more plaintiff-oriented than Caucasians (see Fig. 2).

For defendants, it is impossible in many venues to completely eliminate African American jurors. Nor should one want to; according to the same statistic, one in three African Americans is defense-oriented. The same is true for plaintiffs employing the opposite strategy. An important part of the strategy is using *voir dire* to find African Americans who are more or less plaintiff-oriented based on other factors.

While political orientation does not affect the big picture, among African American mock jurors, political orientation has a substantial effect on verdict preference. Conservative African Americans are in fact more plaintiff-oriented, at 66%, than liberals, at 60%. African Americans who are in the middle of the road



favor the plaintiff 67% of the time.

Engagement in the political process affects verdict preference among African American mock jurors. Among those African Americans who voted in the last presidential election, 64% sided with the plaintiff. However, among those that did not vote, 75% favored the plaintiff.

Another interesting values-driven predictor of verdict preference for African Americans involves support or opposition to the death penalty. African American mock jurors who support the death penalty are more plaintiff-oriented than those who oppose it (70% vs. 64%). Among Caucasians, there is no pattern with regards to this issue, and among Hispanic mock jurors, death penalty supporters are slightly more defense-oriented than those who oppose it.

Another interesting pattern shows that African Americans who have lived in their current residence for a longer period of time are more defense-oriented. More than three in four African Americans who have lived in their current household for less than a year are plaintiff-oriented, compared to only 63% of those who have lived there their entire life. This is the opposite of the trend we see for Caucasians.

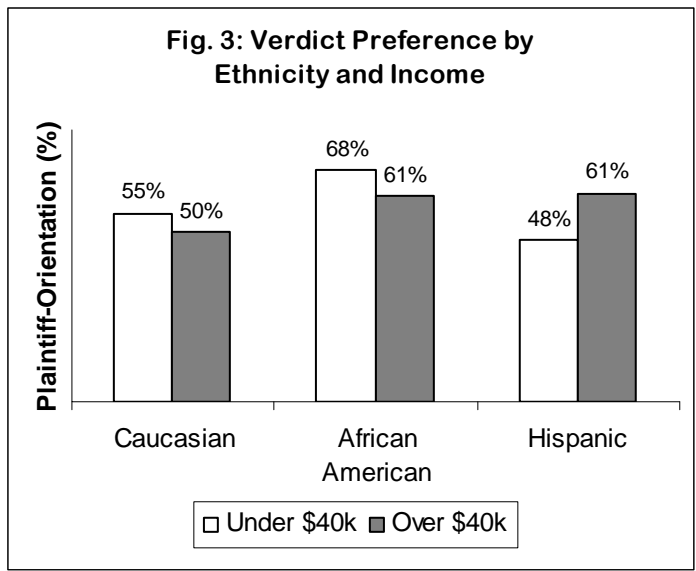
For the most part, however, when we look at subcategories of race, African Americans follow many of the same trends as Caucasians with regards to their predisposition towards the plaintiff or defense. Higher income African American mock jurors trend towards the defense. Among African Americans whose household income is more than \$40,000 a year, 61% are plaintiff-oriented, as compared to 68% of those whose household income is less than \$40,000 a year. Values such

as personal responsibility have less of an impact on verdict preference for African Americans, but otherwise the overall trend is consistent with Caucasians.

This is not the case for Hispanics. As we see with Hispanics, the notion that minority groups (except Asians) are plaintiff-oriented is not true. In fact, the data on Hispanic jurors reveals a profile that is very different from what we would expect to see on many levels. For example, on the issue of income, while higher income Caucasian and African American mock jurors are more defense-oriented, lower income Hispanics are better for the defense than higher income Hispanics (see Fig. 3). The same can be said for Hispanic mock jurors who do not invest compared to those who do. In addition, while both political orientation and political engagement affect verdict preference among African American mock jurors, neither is predictive among Hispanics.

Why do Hispanic mock jurors defy these general expectations? Demographically, they are not too different from African Americans. According to our sample, exactly 57% of both groups have a household income under \$40k. Both groups also have comparable patterns regarding levels of education and employment.

The major difference between African Americans and Hispanics is most likely cultural. Generally speaking, most African American families have been in this country for centuries. As a group, they have both adopted and are defined by American culture. Cultural research has long suggested that many of the differences between Caucasian and African American values are tied more strongly to socioeconomic status than ethnicity (Rokeach and Parker 1970).



On the other hand, research suggests that the differences between Hispanic and Caucasian values are rooted in cultural differences rather than socioeconomic status (Valencia 1989). Our data on income seems to support this notion. Many Hispanics are first- or second-generation immigrants, bringing with them a different set of values and cultural views. In addition, the constant stream of immigrants from Hispanic countries continues to reinforce these cultural values among resident Hispanics. We believe it is among these more recent immigrants where we see markedly different sets of values which, when applied to the American legal system, seem to be beneficial to the defense.

An interesting piece of evidence that supports

this theory is that Hispanics who are less engaged in the community are more defense-oriented. As an example, involvement in social organizations is a useful indicator of community and cultural engagement in America. Among Hispanic mock jurors that belong to social clubs and organizations, 68% favor the plaintiff, compared to 48% of those who do not belong to social clubs or organizations. The same trend exists for volunteers; Hispanics who have volunteered in the past six months are more likely to find for the plaintiff than those who have not. Both of these trends also happen to be the opposite of what we see with Caucasian mock jurors.

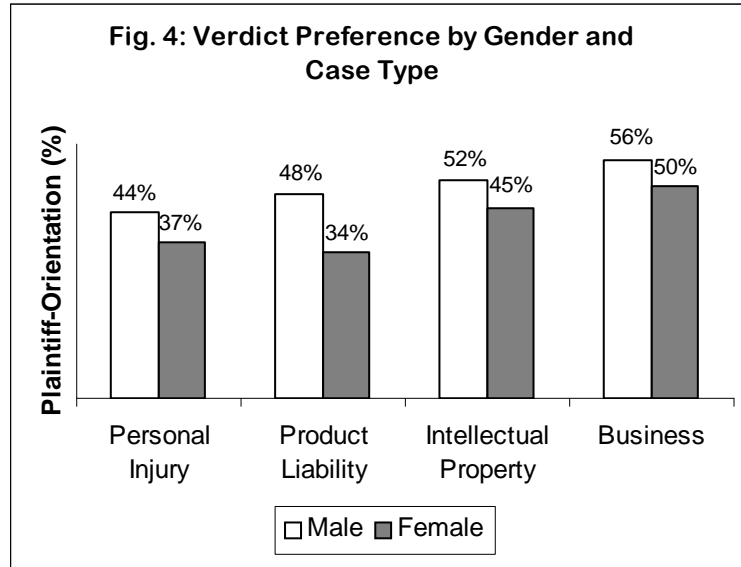
The value of personal responsibility, which will be discussed in greater detail later, is a particularly predictive attribute for Hispanic mock jurors. When asked who is responsible for the rise in teen drug use (entertainment, parents or teens themselves), 62% of Hispanic mock jurors who believe entertainment is responsible favored the plaintiff, compared to only 44% of those who blamed the teens themselves. This is much more pronounced than the trend we see with Caucasians (55% vs. 47%)

Similarly, an anti-corporate bias is a strong predictor of plaintiff-orientation among Hispanics. Among Hispanic mock jurors who disagree with the statement that “Large companies are important to our way of life in America,” 61% are plaintiff-oriented, compared to 51% of those who agree with the statement. This is a stronger correlation than for African Americans or Caucasians.

Future orientation is another area where a strong trend exists for Hispanics but not mock jurors of other ethnicities. Interestingly, the data shows that Hispanic mock jurors who consider themselves optimistic about the future state of this country are much more favorable to the plaintiff (59%) than those who are pessimistic (45%).

Stereotype #3: Females are more plaintiff-oriented than males.

The stereotype that females are more plaintiff-oriented tends to be true in the broadest sense. Across all types of cases, our data shows that women are more inclined to favor the plaintiff than men. Combining thousands of mock jurors in multiple types of cases, approximately half of the men (51%) entering deliberations are favorably disposed toward the plaintiff, while 59%



of the women lean toward the plaintiff before deliberations. However, the magnitude of the difference between men and women varies depending on the type of case being considered.

The biggest gap between men and women is in the category of product liability. While half (52%) of the men entering deliberations favor the plaintiff, two thirds (66%) of women favor the plaintiff. Personal injury cases show a less dramatic difference between men and women, with men favoring the plaintiff 56% of the time, while women favor plaintiff 63% of the time. This gap remains basically consistent in our other two categories: intellectual property and business cases (see Fig. 4).

Of course, females are going to be a substantial part of any panel. Therefore, knowing how to find females who may be more inclined towards either the defense or plaintiff can be a great weapon in jury selection.

Several pieces of data suggest that female professionals can be very favorable to the defense. Only 42% of women who work more than 12 hours a day are plaintiff-oriented in their verdicts. This trend is opposite for males. Among men who work this much, 59% favor the plaintiff.

This suggestion that female professionals are favorable to the defense is also supported by a few income-related data points. Higher-income women trend toward the defense. Furthermore, women who do not invest regularly are more favorable to the plaintiff than those who do (60% vs. 55%).

Another piece of data that drives verdict preference

among women is mobility. Forty-three percent of women who have lived in their current city for less than one year are plaintiff-oriented jurors. Fifty-four percent of those who have lived in their current city for less than four years are plaintiff-oriented. On the other hand, female jurors who have lived in their current city for their entire life are generally more plaintiff-oriented (62%). This trend is the opposite of what we see for male jurors.

On most levels, personal values impact verdict preferences for females in the same manner that they affect males. We will discuss these values in more detail in the section below.

**Beyond Demographics:
Why Personal Values Matter**

As trial consultants, we have discovered when viewing mock jurors that their personal values prove to be the key driving force behind verdict preference. This view is reinforced during post-trial interviews. Three such characteristics seem the most important: views regarding personal responsibility, patterns and attitudes regarding consumption of news and entertainment, and attitudes towards corporate America.

Personal Responsibility

We know from experience with mock jurors that those participants who argue for a strong measure of “personal responsibility” tend to be more defense-oriented in their verdicts. Our data on our mock jurors supports this experience across all demographic categories and all case types.

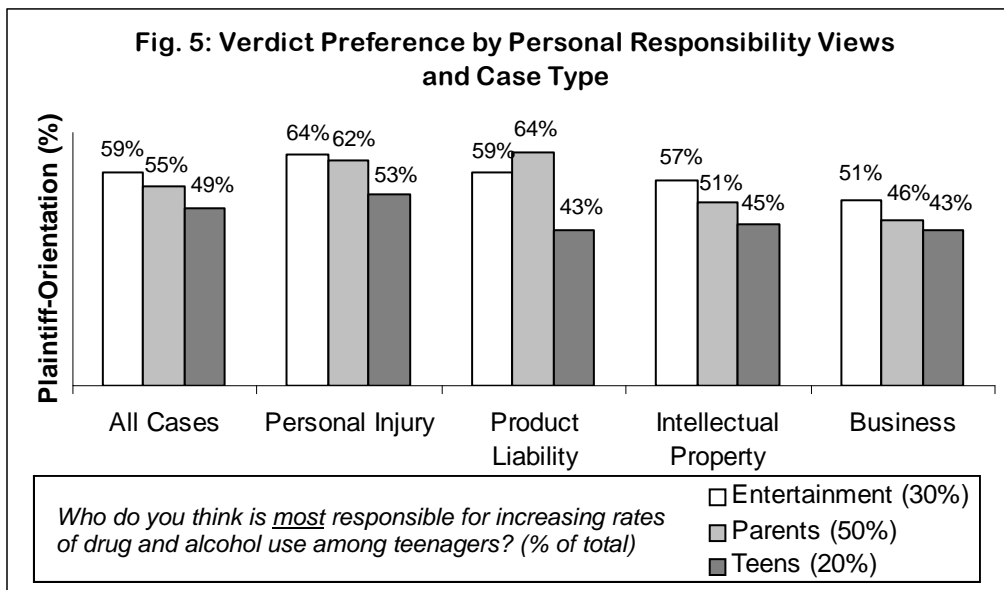
The value of personal responsibility can be expressed in many ways. Individuals who value personal responsibility may be more inclined to hold people responsible for their own decisions rather than blame others. They may think it is important to apply the same standards to everyone. They may simply have a strong sense of

individualism and empowerment, and believe that people are capable of making a difference. Therefore, no single question can accurately determine whether or not personal responsibility is important to an individual.

Additionally, questions which directly address personal responsibility are not accurate. If asked whether they agree with any of the above statements, virtually all respondents would say that they agree. Therefore, questions regarding personal responsibility are more effective when they are asked indirectly.

For example, SLR asks mock jurors who they feel is most responsible for the rise in teenage drug and alcohol use – the entertainment industry, parents, or teens themselves. Individuals who blame teens or their parents are advocating more personal responsibility, while those who blame entertainment are less attuned to the issue of personal responsibility. Indeed, mock jurors who feel the entertainment industry is responsible for the rise in teenage drug and alcohol use are more plaintiff-oriented in all types of cases. On the other hand, mock jurors who are inclined to blame teens themselves for drug and alcohol use are invariably more defense-oriented (see Fig. 5).

Similarly, mock jury participants who agree with the statement that movies and video games are responsible for increased teenage violence are more plaintiff-oriented; 58% percent of these mock jurors found for the plaintiff, as opposed to 53% of mock jurors who disagreed with the statement. Mock jurors who feel that government is more responsible than parents for a child’s education are slightly more likely to be plaintiff-oriented than mock jurors who feel parents are



more responsible than the government (58% vs. 55%).

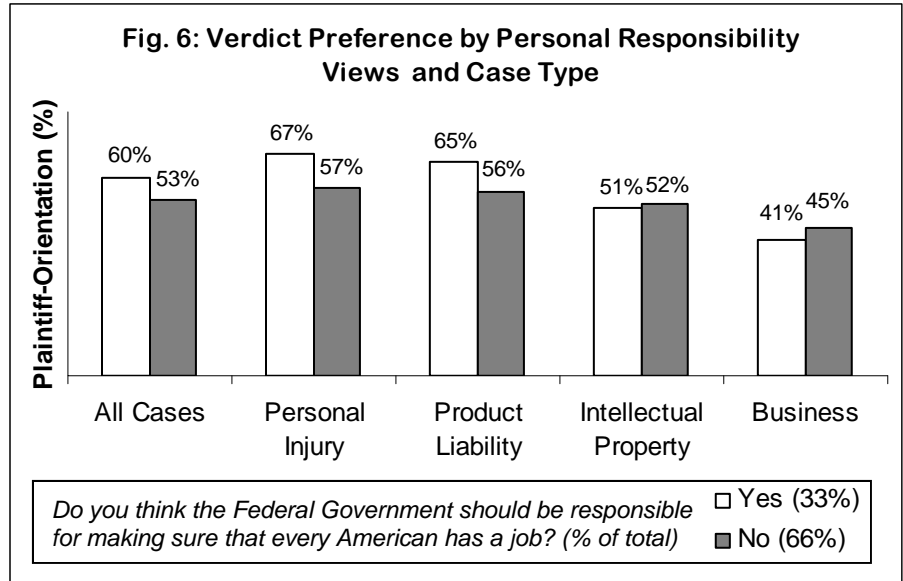
Participants are also asked a series of questions regarding government policies that are related to their feelings about personal responsibility. These include whether or not the Federal government should have a role in ensuring that Americans have jobs, and whether the Federal government should regulate aspects of the economy such as prescription drugs and utilities.

Across all cases, responses to these questions have an impact on mock jurors' plaintiff and defense-orientation. Mock jurors who think the government should ensure jobs are more plaintiff-oriented than those who do not (60% vs. 53%). This value has a particularly strong impact in personal injury and product liability cases (see Fig. 6).

On the issues of prescription drug and utility regulation, we see similar patterns among all cases. Fifty-seven percent of mock jurors who think the government should regulate prescription drugs are plaintiff-oriented, compared to 51% of those who do not. This correlation is present, although it is slightly less defined, when asking about regulation of utilities (57% vs. 53%).

Beliefs in personal responsibility are vital components in determining mock jurors' predispositions towards the plaintiff and defense. Across all demographics and case types, questions that examine potential mock jurors' values of personal responsibility prove to be better predictors of verdict preference than political orientation or simple demographics.

Some people believe that there is a connection between political orientation and personal responsibility, namely, that conservatives believe in taking responsibility for one's actions, while liberals tend to blame someone else. This assumption is not supported by our analysis. One of the problems with simply using political orientation as a *voir dire* question is that when a person is asked his or her political orientation, the answer can be tied to any number of issues. Many people consider themselves conservative simply because they want lower taxes. In the current political



environment, some people will respond that they are liberal because they oppose the current administration. These responses alone actually have little or no bearing on one's value of accepting personal responsibility.

For example, when mock jurors are asked who they believe to be responsible for the rise in drug and alcohol use among teenagers, very conservative mock jurors are actually more inclined to blame entertainment over parents or the teens themselves than liberal mock jurors. If one's value of personal responsibility is a vital component in his or her predisposition as a juror, this data further suggests that political orientation can be an extremely misleading question.

News and Entertainment

Another interesting value-driven component for potential jurors are the sources of news an individual uses on a daily basis. It may not be surprising that jurors who keep themselves well-informed are more defense-oriented. However, it is interesting that jurors who exhibit distrust and skepticism towards mass media are more likely to be defense-oriented jurors.

Among all mock jurors, 53% of those who read newspapers or news articles on the Internet on a daily basis are plaintiff-oriented. However, among those who never read the news, 60% have found for the plaintiff (see Fig. 7). There is a similar phenomenon amongst participants who read trade journals; 51% of mock jurors who read trade journals side with the plaintiff, while 58% of those who do not read trade journals side with the plaintiff.

The interesting finding from this series of questions is that participants who are generally distrustful and much more skeptical of what they read, hear or watch in the media are more favorable toward the defense. This does not exclusively apply to media as a source of news, but applies to media in general. When mock jurors are asked whether they agree that the entertainment industry does a good job of representing life as it is in the US, 61% of those who agree with this statement are plaintiff jurors, compared to 54% of those who do not agree with the statement.

Similarly, participants are asked whether they believe all articles in newspapers are accurate representations of the truth. Among mock jurors in personal injury and product liability cases, those who believe all articles are truthful are more favorable towards the plaintiff than those who do not believe all newspaper articles are truthful.

Why do these individuals, who take media with a grain of salt, seem to be good for the defense? At trial, jurors are being presented two very different views of the same story, often times regarding topics on which they know little or nothing. Jurors hear from the plaintiff first. A juror who is inclined to believe every news story he or she reads is also inclined to believe every word the plaintiff says as the “truth,” discredit the defense before it is even presented. Similarly, an individual who is inclined to want to hear both sides of a news story is more likely to listen to both sides of the story when he or she becomes a juror. Stated another way, an individual who is willing to expend the energy to inform himself or herself on a topic, analyze that information and then form his or her own judgments is more likely to listen to, and weigh equally, both sides

of a lawsuit.

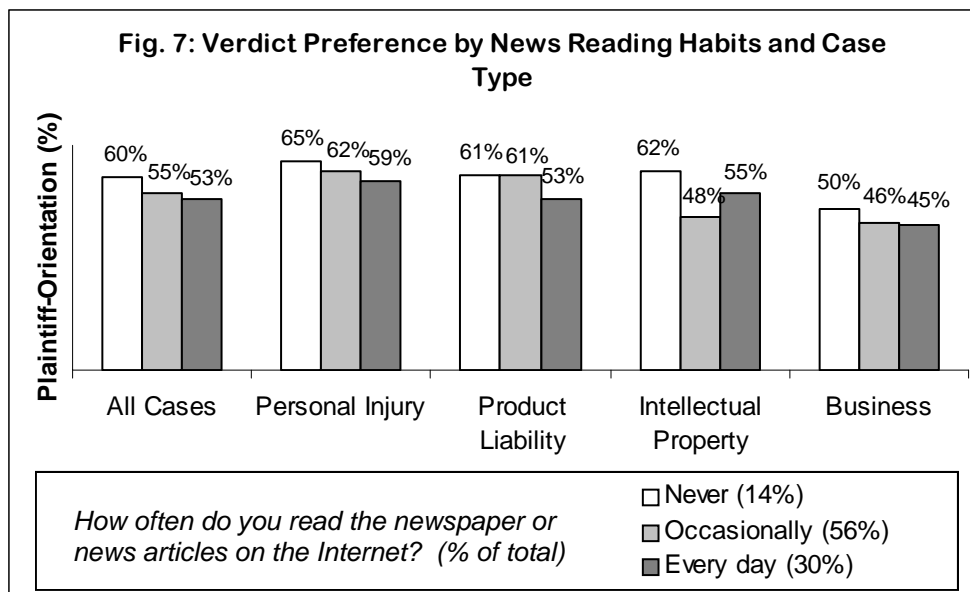
Biases against corporate America

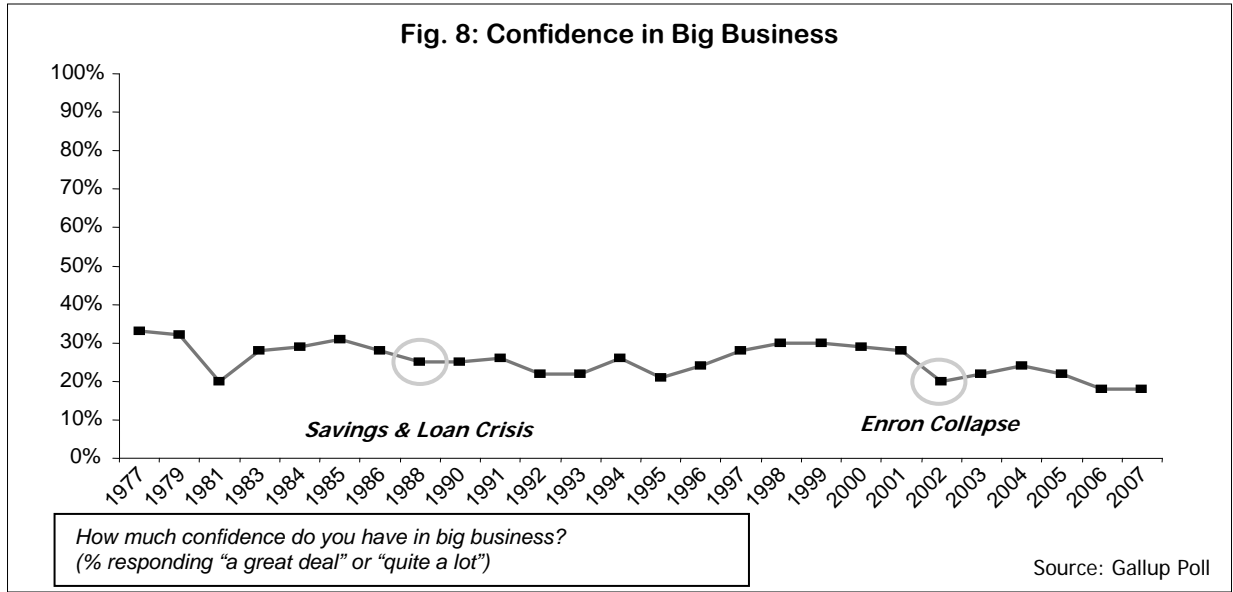
Another important element in certain types of cases is potential jurors’ opinions about big business and corporations. It is important to note at this point that many Americans, lawyers included, seem to think that this country’s “anti-corporate” bias developed as a result of the Enron debacle and other scandals that emerged beginning in 2001. At a minimum, most people seem to believe that anti-corporate biases were greatly exacerbated by these scandals. In fact, this may be the biggest myth of all.

Americans for generations have had an inherent conflict between their need for bureaucratization and big corporations and their need to maintain their individualism. While corporate scandals temporarily put a negative “blip” on the charts, historically, the negative opinions regarding American corporations have been relatively stable (see Fig. 8). As pointed out in the classic book *The Organization Man* by William H. Whyte, written in 1956, “Of all peoples it is we who have led in the public worship of individualism. One hundred years ago De Tocqueville was noting that though our special genius – and failing – lay in cooperative action, we talked more than others of personal independence and freedom” (4-5). This inherent tension between individual freedom and the need for organizations remains a tension in American society today and is seen in the ambivalence many mock jurors have towards corporate America.

The ultimate impact on public opinion of the emerging financial crisis that began in September 2008 is yet to be determined.

In tumultuous times such as these, it can be difficult to accurately assess public opinions on distinct issues and institutions as separate from one another. One reason for this is that negative attitudes pertaining to such an issue can “bleed” into tangentially related areas. For example, while one would expect the Wall Street crisis to adversely affect favorability





towards financial institutions, public attitudes towards corporations as a whole could be affected as well. In the middle of the storm, so to speak, public opinion in general is marked with a high degree of confusion and pessimism. This problem can be exacerbated by outside sources, such as the media, which has shown a tendency to speak of Wall Street and business in general as one in the same.

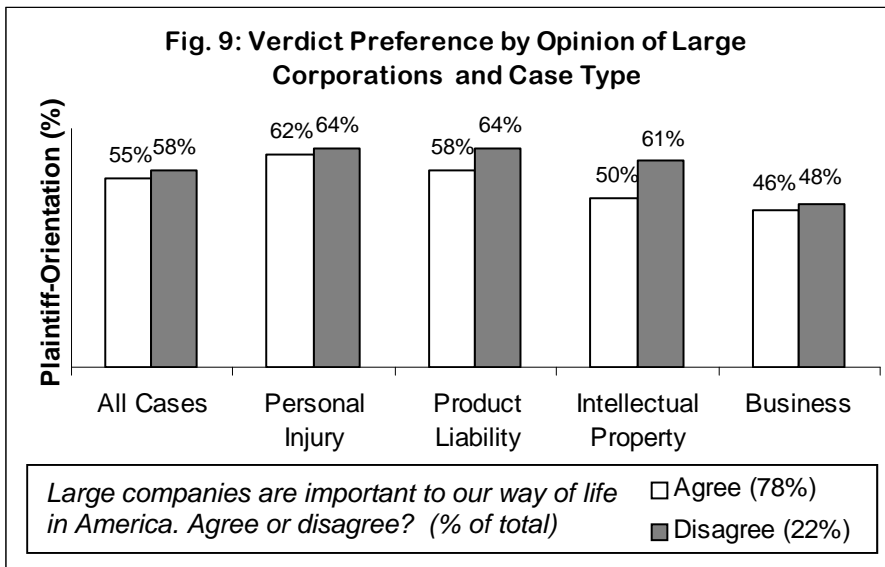
This phenomenon impedes our ability to distinguish negative attitudes toward those directly involved in the current financial crisis from corporations and businesses in general. Consequently, we cannot gauge the long term impact of this economic crisis on American perceptions of corporate America before the crisis shows signs of abatement; to do so would be mis-

guided. Still, while history has shown the events such as the Enron debacle to be watershed moments in terms of governance and policy, as the above chart indicates, these events do not tend to fundamentally alter the course of public opinion of American business and corporations.

Nonetheless, the ongoing uncertainty pertaining to corporate attitudes only reinforces the importance of detecting individual jurors' biases regarding large companies in this country at the outset of jury selection in business-related cases. Mock jury participants are asked by SLR whether they agree with the statement that large companies are important to the American way of life. While across all cases the difference is slight (55% vs. 58%), in product liability cases and intellectual property cases,

there is a marked advantage for the defense among those participants who agree with this statement (see Fig. 9).

The fact that this characteristic only affects these case types is to be expected. Product liability cases frequently have a "David and Goliath" element in that an individual is challenging a large company. Consequently, attacking "corporate America" is almost invariably a component in the plaintiff's arguments. Jurors who are inclined to support this argu-



ment typically fall into the plaintiff's camp before the defense even speaks. On the other side, jurors who are not anti-corporate are more inclined to be open to hearing arguments from a corporate defendant. Additionally, these jurors might hold the plaintiff's pandering to anti-corporate sentiment against them.

Conclusion

Using the appropriate tools to help you determine what prospective jurors might be "good" or "bad" for your case can result in the impaneling of a more favorable jury that alters the course of your trial. However, if this is done without proper diligence, it can possibly lead to a false sense of security, or worse, an unfavorable panel.

Stereotyping is something humans do by nature and necessity every day. However, the most effective means of applying stereotypes for juror selection is to try to avoid using them. For example, while some would think that the best panel for the defense would be entirely composed of conservative white males, this is in fact not necessarily the case, even if such a panel were possible to select.

The better method is based on the personality traits that are both more accurate and less "detectable" to the opposition. Judging prospective jurors by these standards, rather than just by broad demographic tendencies, will help you to outsmart the opposition in the jury selection process.

Selecting the right jury, however, is only one component in a successful trial. A juror's predisposition can only take him or her so far. There are equally important, if not more important, measures that must be taken, which can help you succeed even with an undesirable jury:

1. Craft simple themes and repeat them over and over; give jurors taglines that they can remember.
2. Craft a simple story, no matter how complex your case might be; since you will never get the jury you want, give jurors coherent facts that they can understand, and clear arguments that they can use to argue your case in deliberations.
3. Create clear demonstratives; make sure that each one you use tells a story.
4. Establish the right tone, particularly if you are representing a big corporation; if you represent

the defense and attack the plaintiffs, you risk alienating and "shutting down" jurors.

5. Prepare your witnesses to be believable; if you want your story to be heard, present your witnesses and evidence in a manner that opens people's minds, not one that closes them.

"The assumptions we make... are the natural enemies of creative thought. They short-circuit our imaginations and lead us inevitably to think in terms of common solutions when faced with uncommon challenges."

—*Just Don't Do It!: Challenging Assumptions in Business* by Joel Brandon and Daniel Morris

This quote, taken from a management book, can be applied to many aspects of everyday life. Recently, at a jury research in the South, I was reminded of its application to the use of stereotypes in the process of jury selection. At this research, the vast majority of participants violated traditional plaintiff and juror stereotypes.

Contrary to the lawyers' expectations, many female participants, and specifically African American female participants, argued adamantly for the defense. These jurors were immovable in their arguments against the plaintiffs. Conversely, many conservative, Caucasian males were adamant supporters of the plaintiff. A very experienced defense lawyer commented that the demographic profile of the defense-oriented surrogate jurors was "just the opposite" of those who he would have selected for the actual jury panel.

Interestingly, however, in listening to their comments in deliberations, these jurors exhibited exactly the values one would expect to hear. Defense-oriented jurors, regardless of their demographics, argued that the plaintiff should take responsibility for his actions. Plaintiff-oriented jurors were largely anti-corporate, and that had a major impact on their decision making.

This recent mock jury experience was a poignant reminder, especially for those of us who have seen thousands of mock jurors across the country deliberate, argue, and reach verdicts, that each case is different. Therefore, each case needs its own creative approach to jury selection. Stereotyping prospective jurors, although necessary at times, can be dangerous. Questioning these long-held assumptions, and remaining open minded yourself, may indeed be the key to trying a case to a successful conclusion.

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STRATEGIC LITIGATION RESEARCH

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