
The **PADC** NewsBrief

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SPOTTING JURORS WHO CAN HURT

By DR. JEFFERY R. BOYLL

How can seemingly similar jurors hear the same facts, issues and testimony in a case and come up with highly divergent damage awards – sometimes millions of dollars apart? Obviously, the difference is created not by what the jurors hear in court, but by what they bring to court -- pre-existing attitudes, biases and beliefs resulting in an entirely different evaluation of the case.

Identifying the right jurors for a case requires careful analysis at three levels: demographic, personality/attitudinal, and case specific beliefs. Of these, demographics are the least reliable, but the most often relied on.

Preparation for voir dire always begins with a careful analysis of the case themes and strategies, with an eye toward the types of jurors who will more readily accept your position, and those who will be adverse. For example, if you are defending a school district accused of negligence, assessing attitudes toward schools, teachers, parental responsibility, confidence in the educational system, and other case specific themes will provide the most useful information. Furthermore, highly biased responses to these questions may result in a juror being excused for cause, thus preserving valuable peremptory strikes. When the resources are available, a community attitude/jury selection study can help determine the effectiveness and predictive accuracy of specific voir dire questions. Ideally somewhat nebulous, but highly predictive questions can successfully "expose" your strikes, while "burying" your keeps.

Case specific attitudes aside, are there any reliable predictors of plaintiff vs. defense oriented jurors? At Litigation Research Technologies we have identified a number of modest correlations that are true of Arizona jurors regarding size of damage awards:

Plaintiff Jurors

Democrat
Unemployed/Under-employed
Non-caucasian
Lower income
Feminine
Less educated

Defense Jurors

Republican
Happily employed
Caucasian
Higher income
Masculine
Better educated

There appears to be several themes that run through these lists. For example, jurors who feel oppressed or disadvantaged tend to have a greater willingness to sting "the system" with a larger verdict. Furthermore, they may identify with the "poor" plaintiff and feel better helping them "hit the jackpot." However, keep in mind that demographic variables have only a modest degree of predictive accuracy, unless derived from case specific community surveys. Even then, this information is less useful than accurate assessment of personality/attitudes and beliefs regarding the issues in the case.

Basic personality and attitudes color how jurors will react and perceive the issues of the case. As with case specific beliefs, voir dire questions that are open-ended vs. "yes-no" will be more effective in evaluating built-in biases. A few of the more salient areas to be covered include:

Non-Litigious vs. Litigious

- How many of you feel there are far too many lawsuits in this country?
- How do you feel about someone who brings a lawsuit against another?

Personal Responsibility vs. "Big-Brother Mentality"

- Do you feel [defendants] have a responsibility to protect . . .
- How do you feel about government control on . . .

Economic conservatism vs. Sense of entitlement

- How do you feel when you read about large jury awards?
- Because a person has been injured, do you feel they should be compensated?

Just world vs. Bleeding heart

- Do any of you disagree that some accidents just happen and nobody is to blame?

Depression/Stressors

- Have you suffered any recent stressors -- divorce, loss of job, etc.?
(Depressed jurors tend to award more money.)

Sympathetic vs. Realistic

- Do you think you would have to award something to a plaintiff who had suffered . . . ?

In sum, not every juror sees the case in the same way because jurors filter and perceive arguments based on pre-existing beliefs and attitudes. A carefully conducted voir dire will go a long way toward improving success.

Dr. Boyll is available for consultation at (602) 997-6669.

FEBRUARY MEMBERSHIP MEETING

On February 7, 1991, PADC sponsored a membership meeting at the downtown Arizona Club featuring Dr. Jeffery R. Boyll. Dr. Boyll, a psychologist and president of Litigation Research Technologies, made a forty-five minute presentation on jury behavioral research and the benefits of trial simulations. The presentation qualified for CLE credit.