

EXECUTIVE SUMMARY

Persuasion Strategies National Survey Results, 2007

I. 2007 National Juror Survey¹

Persuasion Strategies' 2007 National Juror Survey is the fifth annual scientific public opinion poll examining the jury-eligible population's attitudes and opinions regarding important legal issues. Once again, 500 randomly selected jury-eligible respondents² completed the National Juror Survey, responding to measures of corporate perceptions, jury damages awards, and the tendency to engage in and enjoy thinking in a telephone survey format.³ This year, respondents also considered and rendered their preliminary leanings in eight different litigation scenarios. Six key findings including reactions to these litigation scenarios are summarized below.

1. Anti-corporate bias is holding steady. Data does not indicate a substantial shift in the public's anti-corporate sentiment in 2007. Belief in corporate deception and executive cover-ups remains steady (Charts 2 and 6) and 80% presume the merit of lawsuits against major corporations (78% in 2006, see Chart 3). Jurors continue to differentiate amongst industries, rating law firms, insurance and pharmaceutical companies less favorably than technology companies, consumer product manufacturers and small businesses (Chart 88). Respondents rated oil and gas companies least favorably, with 75% registering unfavorable opinions -- the most notable change in 2007 anti-corporate bias measures.

¹ Differences cited in the body of this text are referred to as statistically significant or can be verified in the referenced chart, where all statistically significant differences are marked with a star (*).

² Jury-eligibility is satisfied by respondents having either a registered driver license, being a registered voter, or both. All respondents were 18 years of age or older.

³ The final version of the survey document can be found at #3694958_3.

2. Corporate behavior matters. Jurors may be predisposed against corporations but survey data suggest corporate actions are critical. Respondents listened to eight different litigation scenarios and gave their initial impression of whom they would favor, plaintiff or corporate defendant. In general, the *behavior* of corporations seems to matter more than *intentions*. When a company had ethical intentions, but did not do the right thing, 61% of jurors said they would not favor the company (Chart 4). Alternately, only 38% would not favor a company with unethical intentions that did the right thing in the end (a statistically significant difference; see Chart 5). When asked about an industrial accident that killed several factory workers, an overwhelming majority (80%) said they would favor the plaintiff-relatives when the company did not apologize, while 69% favored the plaintiff-relatives when the company released an apology for the accident (Charts 10 and 12). Knowledge of the apology resulted in a statistically significant difference in the percentage of jurors favoring the plaintiffs.

In an employment dispute in which the employer disposed of all the records relating to the employee's termination, 82% would tend to favor the employee compared to just 37% when the company kept all the records relating to the termination, indicating a skepticism of corporate cover ups related to document retention (Charts 19-20). When an oil and gas company faces a claim of underpayment and did not commit to changing its payment practices, 81% said the oil and gas company should be punished with a large damage award (Chart 29). When the company did commit to changing its practices, 59% believed punishment through a large damage award was appropriate (a statistically significant difference; see Charts 29-30). Only the product liability scenario failed to obtain statistically significant differences across scenarios. Data support jurors' tendency to scrutinize the actions of plaintiff-consumers, with the majority siding with the manufacturer whether or not the injured consumer read the warning label (67%) or did not read the warning label (78%; see Charts 15 and 17). In all scenarios varying corporate actions, statistically significant differences indicate that there is a corporate behavior alternative

likely to elicit less negative juror reactions.

3. More bad news for oil and gas companies. Juror views of oil and gas companies continue to decline, with a total of 75% offering “very unfavorable” (45%) or “somewhat unfavorable” (30%) opinions in 2007 – a five year high that is substantially greater than 65% unfavorable views in 2006 (Chart 88). When asked to evaluate oil and gas companies’ treatment of the American public, 62% say oil and gas companies treat the American public “somewhat worse” or “much worse” than they did five years ago (Chart 25). A majority (61%) of respondents believe that oil and gas companies are more likely to conspire with each other compared to companies in other industries (Chart 27).

Jurors prioritize developing alternative energy sources and expanding domestic oil and gas production substantially more than developing more reliable sources overseas (Chart 8). Despite the fact that 57% say that developing alternative energy sources should be the most important option relating to oil and gas supplies in the country (Chart 8), 55% do not believe claims by oil and gas companies that they are working to develop alternative energy resources (Chart 26). Similar skepticism exists about other claims, with only 45% believing oil and gas companies’ claims that they are working to protect the environment (Chart 28). Perhaps unsurprisingly, political affiliation is directly related to opinions of oil and gas issues. Republicans are significantly more likely than Democrats to believe oil and gas company claims that they are working to develop alternative energy resources (55% to 40% respectively) and that they are working to protect the environment (64% to 31% respectively; see Charts 47-48).

4. Jurors’ generally engage in and enjoy thinking. Six survey items assessed respondents’ need for cognition.⁴ Generally speaking, data indicate that a majority of

⁴ See Lord, K.R., & Putrevu, S. (2006). Exploring the dimensionality of the need for cognition scale. *Psychology & Marketing*, 23(1), 11-34.

respondents say they are willing to engage in and enjoy thinking. Approximately two-thirds tended to respond consistent with a need for cognition, specifically in the areas of enjoyment of cognitive stimulation and a preference for complexity (Charts 9, 24, 31, 33). Those with supervisory experience report a higher need for cognition than those that did not have supervisory experience (Charts 37-39, 41-42).

5. Work experience continues to be a critical factor. Nearly two-thirds of respondents (65%) have served in a supervisory position (Chart 32). The same proportion (65%) have worked for a company that employs 500 people or more (Chart 1). Consistent with past survey research, work experiences continue to be valuable predictors of some juror attitudes. Individuals with supervisory experience report less favorable opinions of insurance companies (Chart 36) and more favorable opinions of oil and gas companies than those without supervisory experience (Chart 40). Supervisory experience was also related to a greater need for cognition, with significant differences on five of the six relevant items (Charts 37-39, 41-42)

6. Jury damage awards are large, depending on industry.⁵ Damages measures provided some insightful data about the public's view of jury damage awards. Specifically, data support the conclusion that jurors are sensitive to damage awards; a majority believing jury awards today are large or excessively large (59%; see Chart 23). Just over a quarter of the public believes jury damage awards are about right (28%) while only a small proportion believe awards are small (Chart 23). Democrats (9%) are more likely than Republicans (4%) to believe that jury awards are excessively small (Chart 43).

Jurors do differentiate damages awards across industries. A majority of respondents

⁵ Despite our best efforts to devise survey items providing useful data on damages, damages need further exploration in future surveys.

described a \$5 million jury award against a pharmaceutical company and a company in general as “large” or “excessively large,” but jurors indicated a higher threshold for awards against an oil and gas company. Specifically, 59% of jurors viewed a \$5 million award against a pharmaceutical company as large or excessively large, more than 52% believing the same about the same award against a company in general (Chart 7). Slightly fewer (45%) described a \$5 million award against an oil and gas company as large or excessively large (the differences are not statistically significant). When asked to indicate a damages amount jurors would consider large, 36% indicated that an award \$10 million or more would be a large award against an oil and gas company, while only 21% responded that awards of that amount would be considered large for a pharmaceutical company (Chart 49; a statistically significant difference). Simply put, a “large award” against an oil and gas company was significantly higher than against a pharmaceutical company.

II. 2007 National Arbitrator Survey

Persuasion Strategies conducted its first ever national arbitrator survey in 2007, polling 310 arbitrators on their opinions of attorneys, attorney performance, jury decision-making, and legal decision-making scenarios. Survey respondents were derived from a sampling frame of approximately 4,000 arbitrators identified in a large-scale keyword search (“arbitrator”) from the Martindale-Hubbell database. The search yielded information on individual arbitrators whose email address and state of residence were collected and randomized for survey distribution. The web-based survey included 28 items and was implemented in two versions and distributed to 4,000 arbitrators.⁶ Each arbitrator received an email with a link to one of two versions of the

⁶ The final version of the survey document can be found at #3696758_6.

survey.⁷ A total of 310 arbitrators responded to some or all of the survey items.

The sample was overwhelmingly white (98%) and male (89%) (Charts 79 and 81). Eighty nine percent were 45 or older (Chart 77). The sample also consisted of arbitrators with a range of arbitration experience, 37% saying they have presided over 20 or fewer arbitrations and 19% presiding over more than 100 arbitrations (Chart 76). The survey obtained the following key findings.

1. Arbitrators prefer to reserve judgment. Based on the four litigation scenarios arbitrators considered, data suggest arbitrators are more likely than the jury-eligible public to report a neutral position after hearing superficial or partial case information. Rather than render a leaning, arbitrators were likely to respond that they would favor neither party (Charts 61 – 65, 67). It is important to note that the web-based arbitrator survey overtly offered arbitrators the response option “would not favor one or the other” while the telephone juror survey recorded responses without offering the response options.

Notably, only in the case involving an employee termination did arbitrators show a slight tendency to side with one party or the other. When the company disposed of all the records pertaining to the termination, 38% said they would favor the employee, as opposed to just 3% when the company retained all of the employee records (Chart 63). This data suggests that disposing of records was inflammatory enough for some arbitrators to render a judgment against a company despite arbitrators’ overwhelming tendency to reserve judgment in most instances.

2. Attorneys can improve organization and approach. Two-thirds (67%) of arbitrators believe attorneys do a “good” or “excellent” job communicating persuasively in arbitrations (Chart 52). Nonetheless, arbitrators most frequently cited a lack of preparation as attorneys’ biggest mistake in presenting their cases to arbitrators (Chart 82). Presenting

⁷ Surveys were implemented using the web-based Survey Monkey program.

complicated or unfocused arguments and presuming arbitrators knew as much as the attorney were also frequently mentioned mistakes, among others (Chart 82). Data supports a few remedies for attorney shortcomings in arbitration. Fully 76% of arbitrators said attorneys need to formulate evidence into cohesive stories more often in arbitrations (Chart 53). A great majority (70%) said attorneys need to be more organized and 53% believe advocates need to use case themes more often (Chart 53).

3. Arbitrators view themselves as more capable than juries. When asked to compare themselves to jurors, arbitrators generally see themselves as more capable of rendering legal decisions. When dealing with technical and emotional cases, 80% and 57% respectively, reported that arbitrators are better equipped than jurors to handle such cases (Chart 54). A slight majority (54%) also believed arbitrators are better equipped to decide damages, with 39% believing both arbitrators and juries are equally well-equipped (Chart 54). Interestingly, nearly three quarters (72%) said jury damage awards were either “somewhat” or “substantially” higher than those awarded by arbitrators, suggesting that this sample of arbitrators may believe damage awards lower than typical jury awards are more appropriate (Chart 55).

4. Arbitrators focus on law over ethics. Arbitrators had a clear tendency to value the law over ethics. A majority (69%) of arbitrators said they would favor the law when it conflicts with ethics and an even greater proportion (83%) believed that when evaluating a company’s conduct, whether the company acted legally should be given greater weight than whether it acted ethically (Chart 59 and 60).

III. Comparative Analysis: Jurors versus Arbitrators

In order to evaluate similarities and differences in juror and arbitrator survey responses, Persuasion Strategies conducted comparative analyses of the juror and arbitrator survey data. Analyses obtained statistically significant differences in several areas, including each samples’

anti-corporate bias and views of corporate industries, how jurors and arbitrators value ethics versus the law, need for cognition, and opinions of damage awards. *(Note: All the differences reported below are statistically significant at the .05 level. Charts containing statistically significant differences are marked with a star (*) either in the chart title, meaning the dichotomous differences are significant, or on the comparison bars, meaning specifically marked categories obtained statistical significance.)*

1. Jurors are more biased against (most) corporations. Jurors are more likely than arbitrators to have worked for a large corporation (Chart 83) and are generally more skeptical of corporations and corporate executives than arbitrators. A majority of arbitrators agree (63%) that business executives share their values, while only 30% of jurors agree with the same statement (Chart 90). When asked whether the government tends to favor large corporations more than it favors ordinary Americans, 84% of jurors agree compared to 72% of arbitrators (Chart 91). Comparisons of corporate perceptions by industry also yielded some important differences, with arbitrators having more favorable opinions of law firms (87% versus 62%) and oil and gas companies (42% versus 25%) than jurors. Jurors, however, had significantly more favorable opinions of insurance companies (55%) than arbitrators (29%) (Chart 88). Generally speaking, arbitrators identify more with corporate America and its executives, but the distinction is not without important variation, specifically when it comes to perceptions of corporate industries.

2. Arbitrators prioritize law over ethics. Arbitrators (83%) are more likely than jurors (40%) to say that when evaluating a company's conduct, whether it acted legally should be given greater weight than whether it acted ethically (Chart 86). Similarly, when ethics and the law conflict, arbitrators (83%) were more likely than jurors (61%) to say the law should be followed (Chart 89). Notably, jurors have consistently shown a tendency to believe more in following the law when it conflicts with personal ethics (61%), but to value ethical criteria over legal criteria when evaluating company conduct (60%). Based on survey results, arbitrators

consistently value the law in both instances.

3. Arbitrators have slightly higher need for cognition. Four survey items from the Need for Cognition scale were incorporated in both the juror survey and arbitrator survey. All four items obtained statistically significant differences between the two samples. In each instance, arbitrators exhibited a greater need for cognition than the jury-eligible public, with the most dramatic difference being 88% of arbitrators (versus 40% of jurors) responding it is false that they feel relief rather than satisfaction after completing a task that required a lot of mental effort (Chart 87, 92, 94, 95).

4. Arbitrators are more predisposed against construction contractors. A single survey item assessed both samples' predispositions in a construction litigation scenario involving complaints of unreasonable delay of project completion in the face of unreasonable delay in payment. Arbitrator responses suggest a slight tendency to favor the construction client (67%) over the contractor (33%). A majority of jurors (58%) also favored the client, but were statistically less likely to do so in comparison to arbitrators (Chart 97).

5. Jurors are more likely to view jury damage awards as excessive. When asked about jury awards today, jurors were more likely to say they are excessive, with 36% of jurors believing they are excessively high (versus 10% of arbitrators) and 7% believing they are excessively small (versus 1% of arbitrators) (Chart 93). In addition, arbitrators were more likely to say jury awards today are about right (55% versus 28% of jurors).

Specifically, when asked to describe a damage award in a case involving an industrial accident that resulted in an employee death, arbitrators were significantly more likely to believe a \$10 million award was "average." Specifically, 50% of arbitrators said a \$10 million award was average when the company did not apologize and 53% said it was average even when the company did apologize (Chart 84-85). On the other hand, 27% of jurors (versus 5% of arbitrators) believed a \$10 million award was excessively large when the company apologized

and 22% (versus 2%) believed the same when the company did not apologize (Chart 84-85). In this particular scenario, jurors were more likely than arbitrators to believe a substantial award was excessive and arbitrators more likely to describe the same award as “average.” Taken together, this data tends to suggest arbitrators in this sample had less variable and more moderate views of jury awards.⁸

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⁸ This finding mirrors some research finding jury damage awards are more variable than arbitrator awards (e.g. Vidmar, N. & Rice, J. (1993). Assessments of noneconomic damage awards in medical negligence: A comparison of jurors with legal professionals, *Iowa Law Review*).