

**Locating Anti-Corporate Bias in Your Jurors:  
Some Dark Clouds  
(and Some Silver Linings)**

*A Persuasion Strategies White Paper*

**October 8, 2003**



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**Locating Anti-Corporate Bias in Your Jurors:  
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## Locating Anti-Corporate Bias in Your Jurors: Some Dark Clouds (and Some Silver Linings)

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### *A Persuasion Strategies White Paper*

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#### **I. Introduction**

In the wake of the Enron scandal and in the context of continuing and intense media attention on corporate misdeeds, one might think that in our courts, corporate America has been permanently cast in the role of the Big Bad Wolf. When defending its interests before a skeptical jury, can the corporation escape the perception that it is simply ‘huffing and puffing’ against yet another poor plaintiff’s house of straw? An article that appeared in the May, 2003 issue of *The Docket*, authored by an attorney for BP America and two members of *Persuasion Strategies*,<sup>1</sup> reported the results of a nationwide telephone survey of 505 jury-eligible Americans and concluded that anti-corporate bias does *not* automatically translate into pro-plaintiff verdicts. A strong prevalence of anti-corporate bias is accompanied by a “desensitizing effect” in which continued emphasis on anti-corporate themes over time serves to reduce the perceived severity of corporate wrongdoing and expand the responsibility being placed on plaintiffs: they should have known better, they should have taken more steps to protect themselves. Or, to continue the analogy, the more houses that are seen being blown down by the ‘Big Bad Wolf,’ the more important it is for plaintiffs to have houses made of brick, not straw.

The present *Persuasion Strategies* white paper will provide further and more focused analysis of the results of our nationwide telephone survey of jury-eligible respondents. Our goal is to carry this line of analysis closer to the jury by addressing the question, “Where do these potentially biasing and potentially desensitizing attitudes *live* among your potential jurors?” By examining the attitudinal and demographic factors that tend to accompany anti-

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<sup>1</sup> Montgomery, M. L., Lisko, K. O., & Gendaszek, A. E. (2003, May). Post-Enron jury perceptions and what to do about them. *ACCA Docket*. p. 79-91.

and pro-corporate sentiment, we hope to provide important advice on the questions to explore in selecting and analyzing your future jury. After first exploring the good and the bad news concerning overall anti-corporate bias, we will discuss some potentially surprising data on the role of level of education and race in the development or inhibition of anti-corporate bias.<sup>2</sup>

## **II. The Big Picture – Overall Views on Anti-Corporate Bias**

### **A. Some Dark Clouds...**

#### *Distrust of Corporations*

It doesn't take a social scientist to know that it has been a long time since sentences like "America's business is business," and "What is good for General Electric is good for America," were uttered without irony. Anti-corporate sentiment is now a regular feature of the litigation environment that all corporate counsel and officers need to treat seriously, regardless of the type of litigation and the overall size of the corporation. A more focused look at the findings from the *Persuasion Strategies* nationwide survey indicates that anti-corporate sentiment transcends many demographic segments of society and manifests in various forms.

Results of our survey reveal that 84 percent of respondents agreed with the statement, "Executives of big companies often try to cover up the harm they do." Similarly, only 37 percent agreed that, "Large corporations are interested in making profits *only* if it doesn't hurt the public." Not surprisingly, the majority of respondents (65 percent) also felt that it is likely for competitors to conspire together if it increases their bottom line.

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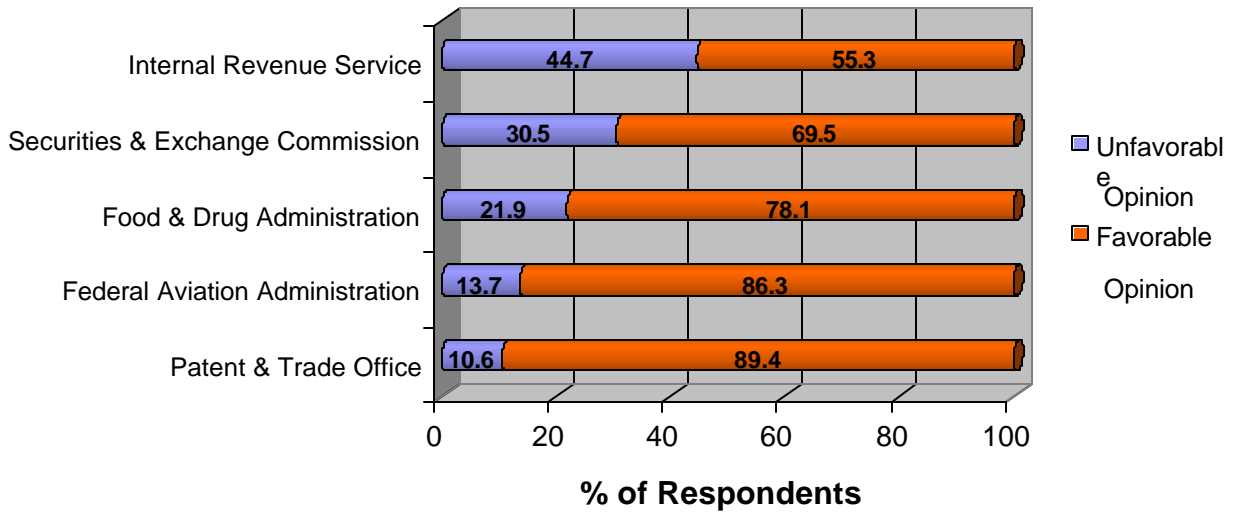
<sup>2</sup> A more precise description of our sample is included in Appendix A, and full results on attitudinal questions in listed in Appendix B.

### *Support for Government Regulation*

In light of increasing anti-corporate sentiment, it is not surprising that jurors strongly support government regulations, specifically those imposed by the Sarbanes-Oxley act. Sixty-four percent of survey respondents *strongly* agreed that government regulations that make CEOs personally accountable for the accuracy of financial information about their companies are critical; less than 10 percent of respondents indicated disagreement, reporting that these regulations are not important. As likely as it is that some jurors are not familiar with new government regulations imposed on corporations, it is more likely that educated jurors and those who are active investors in the stock market will know at least generally about these new regulations.

Given this familiarity, jurors in the post-Enron era are likely to evaluate a corporation's conduct with the government regulations in mind. Even if corporate misconduct occurred before the imposition of these regulations, jurors may hold the government agencies responsible for corporate governance as negligent because they were not involved sooner. The regulators themselves are not likely to escape jurors' critical scrutiny. More than one-third of survey respondents held unfavorable views of the Securities and Exchange Commission. In comparison to other government agencies, only the Internal Revenue Service was viewed less favorably (45 percent).

**Chart 1: Mixed Opinions on Government Agencies**



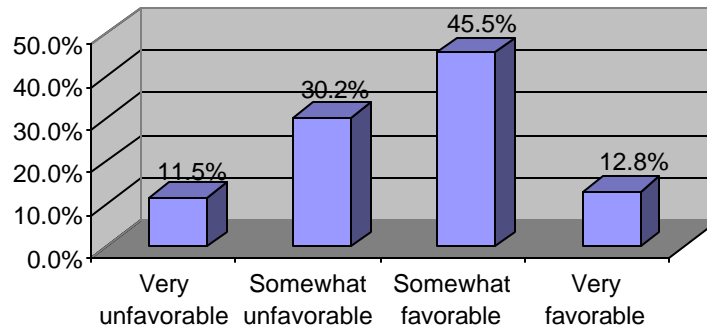
Thus, while support for additional regulation gains strength from the current anti-corporate mood, it is also important to note that in the minds of potential jurors, the regulations and the regulators may absorb some responsibility from corporations. In other words, corporations may be able to limit their own liability, in the minds of jurors, by carefully emphasizing the responsibility of the corporate watch-dogs. The potential “silver lining” aspect of this finding leads us to the consideration of a few silver linings in the next section.

**B. ...And Some Silver Linings**

*Executives Aren't As Bad as You've Heard*

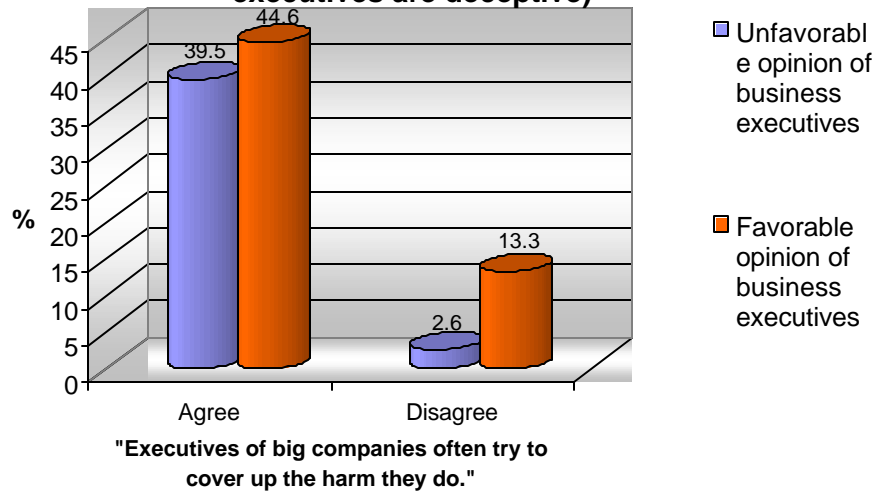
So does juror distrust of corporations automatically translate into skepticism about business executives? Not necessarily. Overall, most respondents held a “somewhat favorable” or “very favorable” opinion of business executives.

**Chart 2: A Moderately Favorable Opinion of Business Executives**



Even more interesting, almost one-half of respondents who agreed that executives of big companies often try to cover up the harm they do *also* held favorable opinions of business executives (44.6 percent).

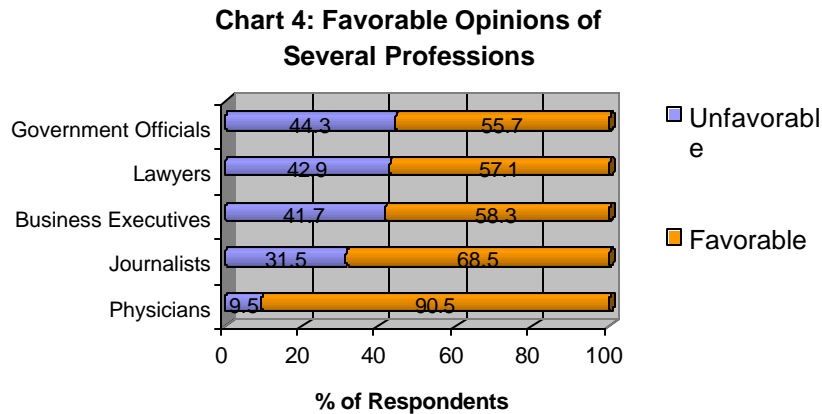
**Chart 3: Favorable Opinion of Business Executives (even among those who believe that executives are deceptive)**



This finding appears to indicate that, while opinions do tend to run generally against corporations, some executive *behavior* within those corporations may be taken for granted (unfortunately) and does not necessarily result in a reduced respect for corporate executives generally.

*Favorable Views of Other Professions*

Contrary to the results of national surveys conducted before the events of Enron,<sup>3</sup> findings from our survey when combined with less formal observations from continuing mock trial research conducted since the collapse of Enron, seem to indicate that opinions of business executives and even lawyers are becoming more favorable.



Knowing about the potential for both dark clouds and silver linings, corporate counsel and clients have a strong interest in learning ways to minimize the first, and maximize the second, when selecting juries. After considering two additional factors which bear upon anti-corporate bias, the final section of this paper will offer some constructive advice on using this data in order to inform jury selection for corporate defense.

**III. A More Focused Picture: Distrust Among the Less Educated**

**A. Some Dark Clouds: Rigid About Regulations...**

Not surprisingly, less educated jurors (those with a high school diploma or less) feel particularly skeptical of corporations and supportive of additional regulations on businesses. Findings from our survey indicate that less educated citizens are:

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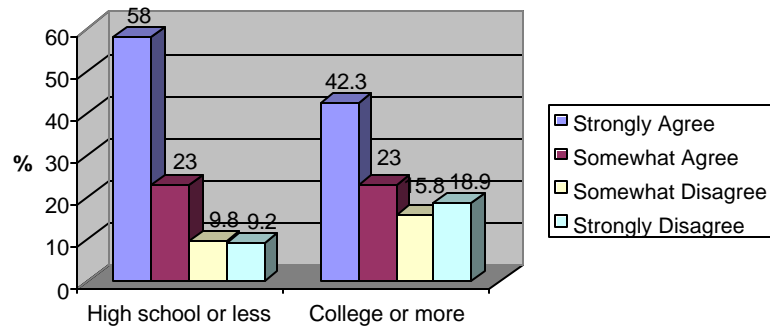
<sup>3</sup> e.g., Van Voris, B. (1998, Nov.). Jurors do not trust civil litigants, period. *National Law Journal*, 2, A24.



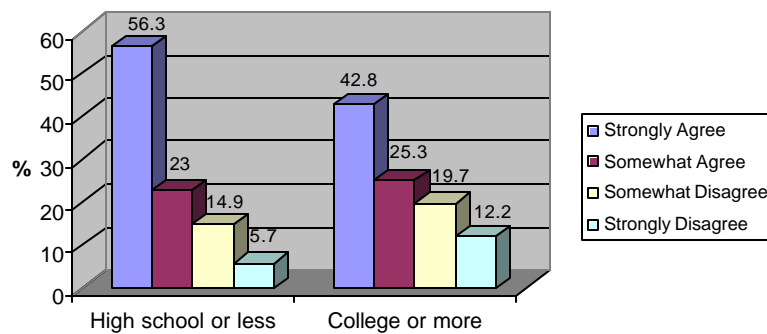
- Significantly *more* willing to hold corporations to a higher standard than individuals.<sup>4</sup>
- Significantly *more* likely to believe that if a lawsuit is filed against a major corporation, then the case must have some merit.<sup>5</sup>
- Significantly *more* likely to believe that the government must increasingly police and regulate corporations.<sup>6</sup>

The following charts show the extent of these differences:

**Chart 5: Corporations should be held to a higher standard of responsibility than individuals are.**



**Chart 6: If someone sues a major corporation, the case must have some merit.**

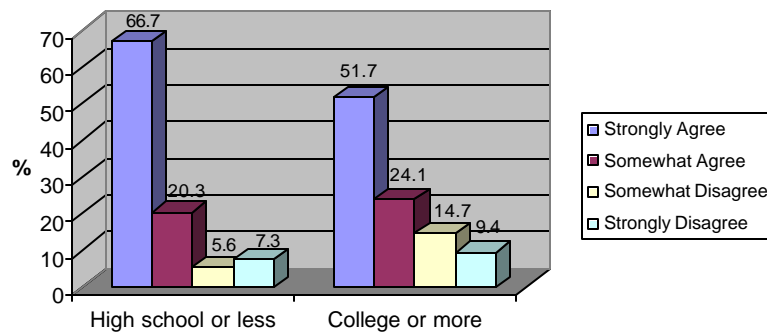


<sup>4</sup>  $\chi^2 = 15.68$ ,  $df= 3$ ,  $\alpha = .001$

<sup>5</sup>  $\chi^2 = 10.70$ ,  $df= 3$ ,  $\alpha = .023$

<sup>6</sup>  $\chi^2 = 13.91$ ,  $df= 3$ ,  $\alpha = .003$

**Chart 7: The government needs to police corporations more these days.**



A somewhat stronger level of distrust among those with less formal education may indicate an animosity toward those who are seen as having greater social power. Alternatively, it may be seen as a sign that those with more formal education are themselves more likely to have personal employment experiences at the management and executive levels and are thus more likely to assess corporations in terms of their own experiences rather than in terms of mass media characterizations.

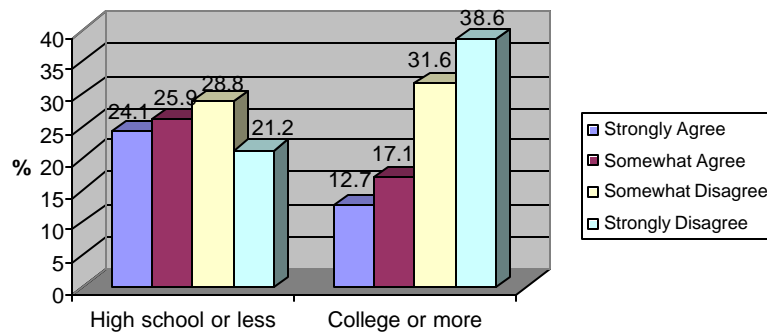
**B. ...And Some Silver Linings: Plaintiff Skeptics**

While jurors with less education appear to be more skeptical of corporations, they also appear to be more willing to place responsibility on potential plaintiffs. This “once bitten, twice shy” attitude is more prevalent among less educated jurors. Survey respondents who concluded their formal education with a high school degree or less were significantly more likely to strongly agree with the statement, “I would be less likely to invest in a large corporation now that the Enron collapse has occurred,” than more educated respondents. Less educated respondents were more than twice as likely to strongly agree with the statement, “People should know better than to invest in large corporations in the future.”<sup>7</sup>

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<sup>7</sup>  $\chi^2 = 23.57, df= 3, \alpha = .001$

**Chart 8: People should know better than to invest in large corporations in the future.**



In addition to evaluating the role of juror education, we also consider the importance of the jury’s racial make-up.

**IV. Another More Focused Picture: Support from Minorities**

**A. Some (Possibly Surprising) Silver Linings....**

Results from our survey reveal that minorities, African Americans, Hispanic Americans, Native Americans, Asian Americans, and Pacific Islanders (racial minorities at a national level, but groups which may, of course, form majorities in particular jurisdictions), are less likely than Caucasians to believe that corporations are deceptive and out to harm the public. Compared to Caucasians, those who are members of racial minorities are significantly *more* likely to:

- Disagree with the belief that executives of large companies often try to cover up the harm they do.<sup>8</sup>
- Disagree with the belief that ethics should prevail over the law when evaluating a company’s conduct.<sup>9</sup>

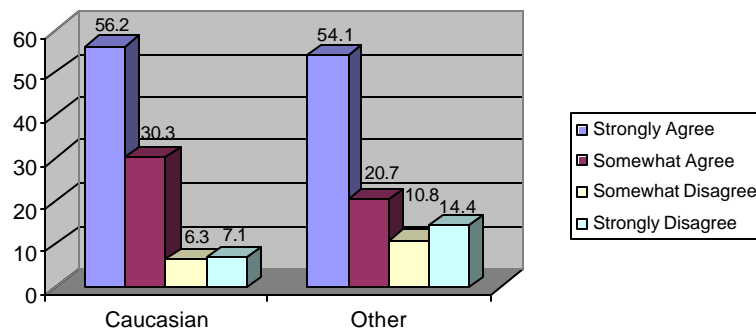
<sup>8</sup>  $\chi^2 = 10.44, df= 3, \alpha = .015$

<sup>9</sup>  $\chi^2 = 15.20, df= 3, \alpha = .001$

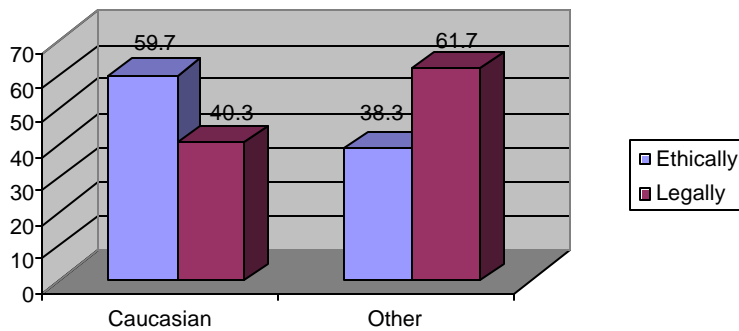
- Agree with the belief that it is unlikely for competitors to conspire together even if it increases their bottom line.<sup>10</sup>
- Agree with the belief that small and large businesses are interested in making profits only if it doesn't hurt the public.<sup>11</sup>

These relationships are illustrated in the following charts:

**Chart 9: Executives of big companies often try to cover up the harm they do.**



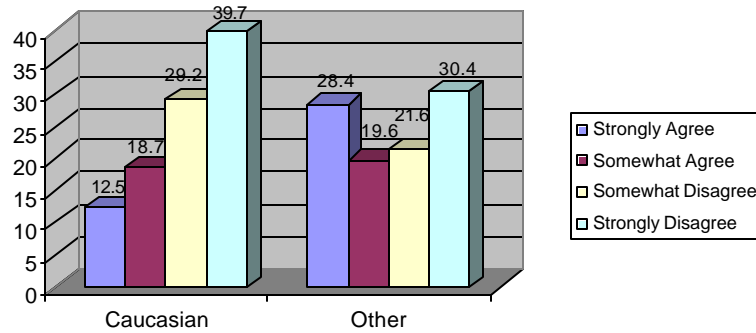
**Chart 10: Should a company's conduct be evaluated ethically, or legally?**



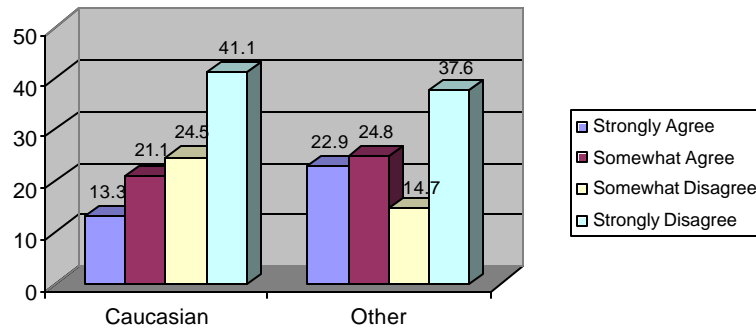
<sup>10</sup>  $\chi^2 = 15.76$ ,  $df = 3$ ,  $\alpha = .001$

<sup>11</sup>  $\chi^2 = 12.28$ ,  $df = 3$ ,  $\alpha = .006$  (small companies);  $\chi^2 = 9.48$ ,  $df = 3$ ,  $\alpha = .024$  (large companies)

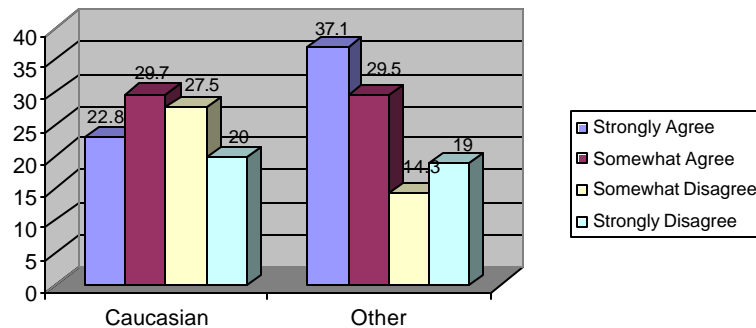
**Chart 11: It is unlikely for competitors to conspire together even if it increases their bottom line.**



**Chart 12: Large corporations are interested in making profits only if it doesn't hurt the public.**



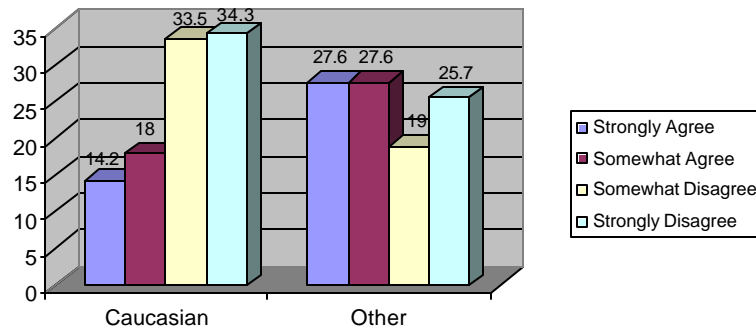
**Chart 13: Small companies are interested in making profits only if it doesn't hurt the public.**



Minorities were also more likely to place responsibility on investors by saying that people should know better than to invest in corporations in the future.<sup>12</sup>

<sup>12</sup>  $\chi^2 = 19.92, df= 3, \alpha = .001$

**Chart 14: People should know better than to invest in large corporations in the future.**



These findings indicate that, despite what might be presumed about the anti-establishment attitudes of minorities, those in the juror-eligible population of this survey did not harbor a greater level of distrust toward corporations based on their racial minority status. On the contrary, the significant differences trended in the opposite direction: minorities are more likely to hold positive attitudes toward corporations, more likely to let the law rather than ethics guide their evaluation, and less likely to presume wrongdoing, deception, or a willingness to harm the public in the name of profits.

**V. Putting Research Into Practice: How to Use Those Silver Linings (And Avoid Those Dark Clouds)**

Prior research and experience has shown that a strong anti-corporate bias exists among potential jurors, but that it is not the uniformly dark cloud that one might suppose it to be. Opportunities exist not only for playing to those positive impressions of corporate behavior that do exist, but also for playing to the expanded sense of plaintiff responsibility that has come in the wake of diminished expectations for large companies. This *Persuasion Strategies* white paper has focused on examining key differences within the pool of potential jurors in order to make conclusions about where such attitudes might be found, and to translate those conclusions into suggestions for promoting the selection of the most fair jury possible.

A close analysis of the data reveals that anti-corporate bias may be combated by first, setting aside the assumptions of counsel and corporate officers regarding the extent of anti-corporate bias; second, adjusting your theme to incorporate those corporation-positive

themes that do persist, and third, targeting during jury selection the specific attitudes that cause the greatest concern. Each of these three recommendations is fleshed out in the points below:

### *Setting Aside Assumptions*

Several assumptions regarding the prevalence, location, and effect of anti-corporate bias should be set aside in favor of a more specific reading of your jury. Specifically:

- Don't assume that anti-corporate bias is always working against you. The present survey reveals that, rather than manifesting as a uniform sentiment, anti-corporate bias is complex and nuanced.
- Don't assume that anti-corporate bias is uniform across all social strata. The present research indicates that by taking educational level into account, for example, .....
- Avoid stereotyping racial minorities as "anti-establishment." Indeed, the present research indicates that minorities actually show a *greater* level of support for corporations. This does not suggest, of course, that corporate trial counsel should attempt to stack their juries with racial minorities. A better course would be to use the information to challenge what we or our clients might take to be common-sense wisdom about jury behavior. Importantly, this information suggests that the best solution is to focus on the attitudes that tend to accompany anti-corporate bias regardless of whether they appear among Caucasians or racial minorities.

### *Adjusting Your Themes*

The theme or key message in your corporate defense trial can also benefit from a knowledge of and sensitivity toward the level and form of anti-corporate sentiment among jurors. Specifically, we recommend developing themes which include a focus on:

- The responsibility of regulations and regulators

- The good opinion that jurors still retain about executives generally
- Jurors' tendency to place greater responsibility on potential plaintiffs based on the notion that they "should have known better"

### ***Targeting the Most Troublesome Attitudes***

In order to defend your corporate clients, identify the specific attitudes and beliefs that tend to accompany an anti-corporate bias. For example, jury selection should focus on identifying, exposing, and inoculating against the following beliefs:

- Corporations deceive and willingly profit at the expense of the public good
- Companies will band together in the interest of profits
- The profit motive is inherently correlated with unethical business practices
- Corporations must go above and beyond the required regulation standards to be considered a decent corporate entity
- Executives will generally lie in order to defend their company
- Expert witnesses are nothing more than hired guns
- A corporation is more responsible than smaller companies or individuals to ensure fairness in a mutual agreement

Ultimately, in the theater of the American court, it is not likely that the corporation will be transformed from the Big Bad Wolf into Prince Charming any time soon. Anti-corporate bias will need to be located and combated in each individual jury. In every case, the best course of action is to approach corporate defense with a sensitivity to both the risks and the opportunities.



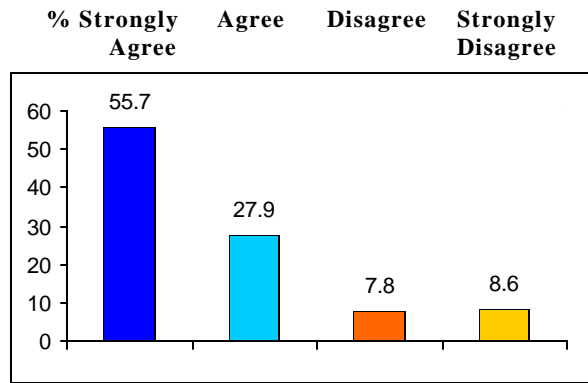
## APPENDIX A: The Sample

Persuasion Strategies conducted a nationwide telephone survey of 505 jury-eligible citizens conducted between February 3rd and 5th, 2003. A random-digit dial method was used to reach a statistically valid, representative sample of households. Screening questions were asked to ensure respondents were qualified in a manner consistent with that of jury pool selection procedures. All respondents were at least 18 years old, a United States citizen, either registered to vote in their resident state or a holder of a state-issued identification card (*e.g.*, a driver's license), and able to read, write, and speak English. Demographic characteristics of respondents are displayed below.

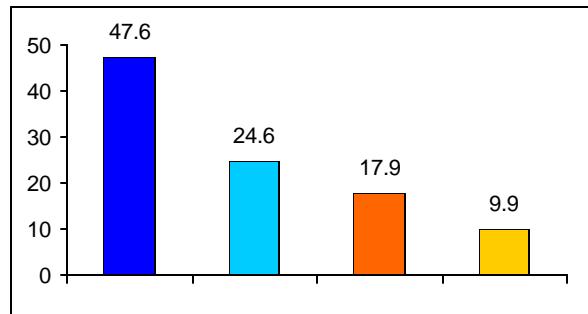
N	505
Male (%)	47.7
Female (%)	52.3
Level of education (%)	
High school or less	35.8
College or more	64.2
Employment status (%)	
Employed	59.6
Retired	24.6
Homemaker	6.8
Unemployed	4.8
Student	4.0
Political Affiliation (of those indicating one) (%)	
Conservative	41.2
Moderate	38.2
Liberal	22.3
Household total income (2002) (%)	
<\$44,999	52.7
\$45,000 – 99,000	38.2
>\$100,000	9.1
Race (%)	
Caucasian	78.6
African American	9.9
Hispanic	7.7
Native American	1.6
Asian/Pacific Islander	1.8
Employed with a company >500 (% ever been)	65.1
Management (% ever held managerial position)	53.3

### APPENDIX B: Full Attitudinal Results

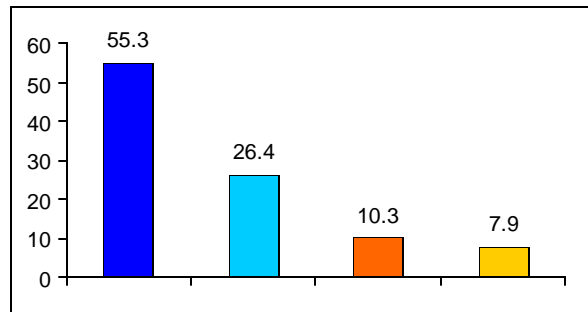
Executives of big companies often try to cover up the harm they do.



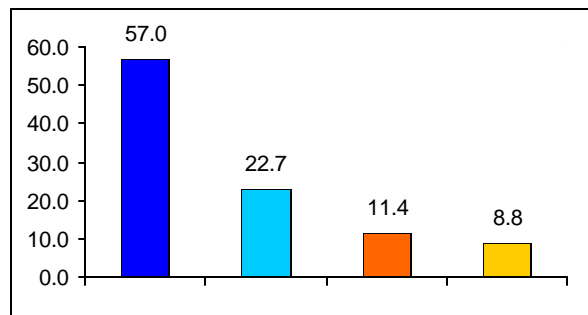
If someone sues a major corporation, the case must have some merit.



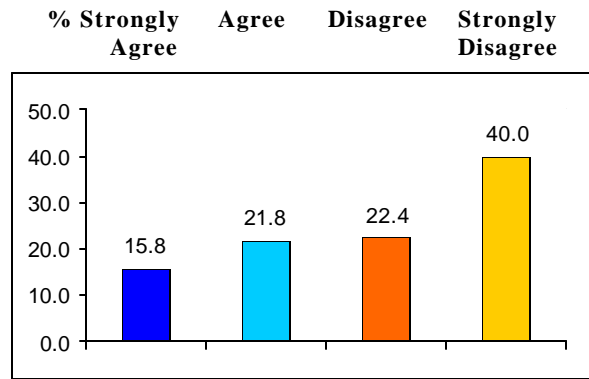
If a major corporation could benefit financially by lying, it's probable that it would do so.



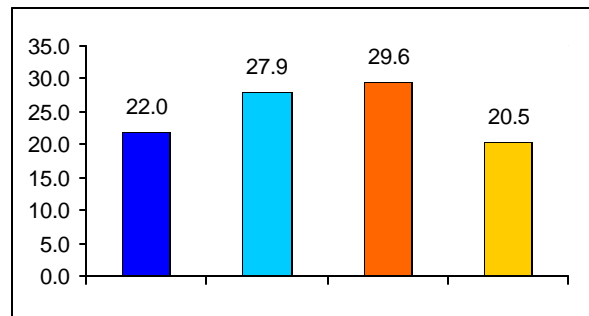
The government needs to police corporations more these days.



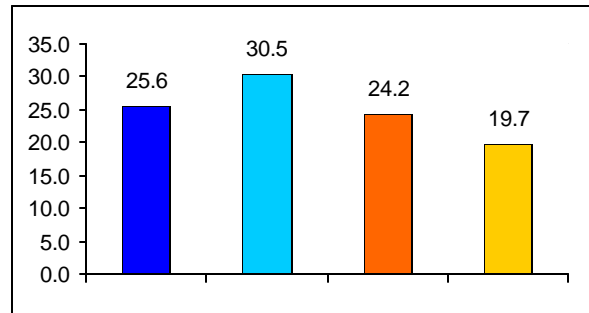
Large corporations are interested in making profits only if it doesn't hurt the public.



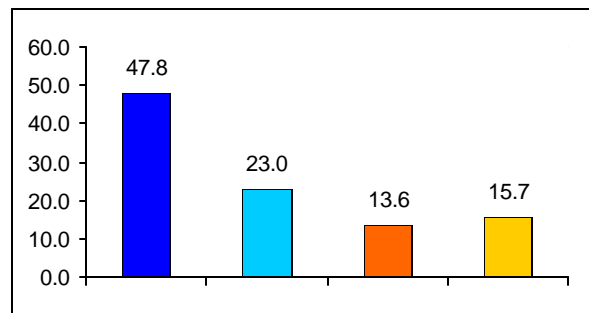
The government has gone too far in regulating business.



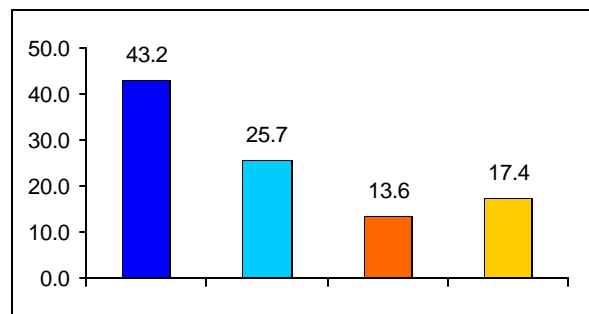
Small Companies are interested in making profits only if it doesn't hurt the public.



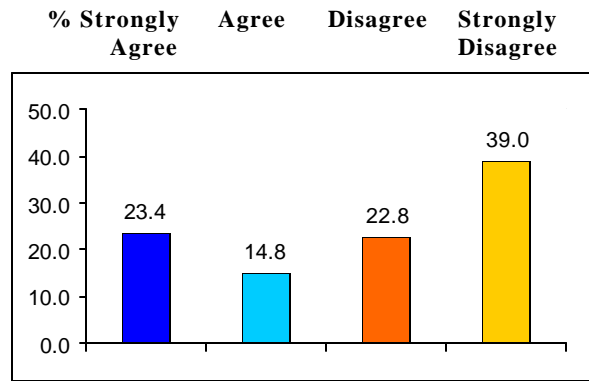
Corporations should be held to a higher standard of responsibility than individuals are.



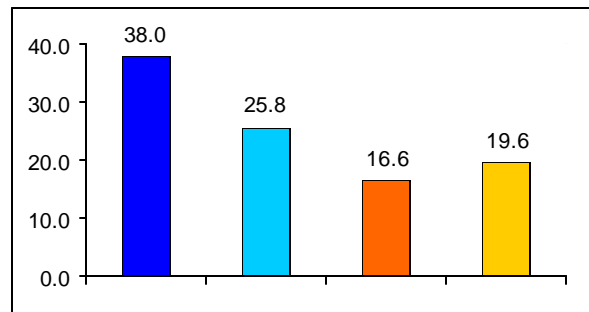
I was surprised to learn of Enron's actions leading to the recent collapse of the company.



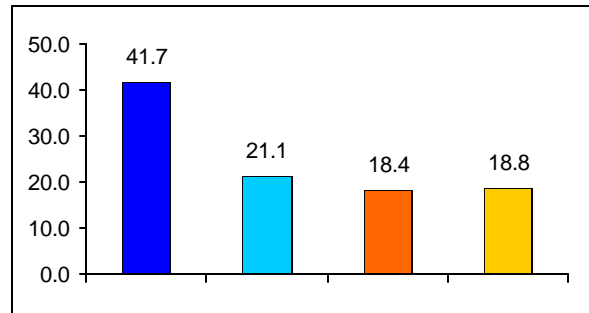
I would be surprised if another company acted like Enron did in the future.



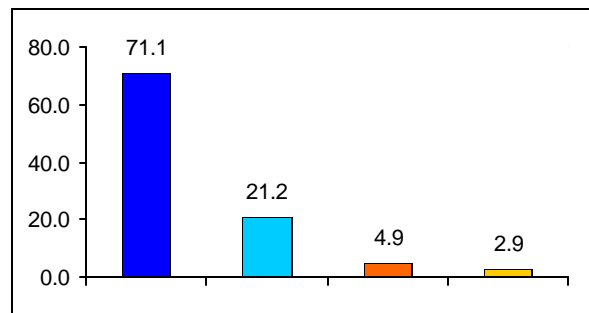
I was surprised to learn of the accounting firm's, Arthur Anderson's, role in the Enron Scandal.



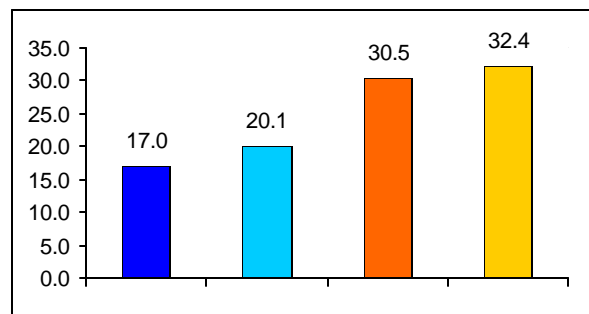
I would be less likely to invest in a large corporation now that the Enron collapse has occurred.



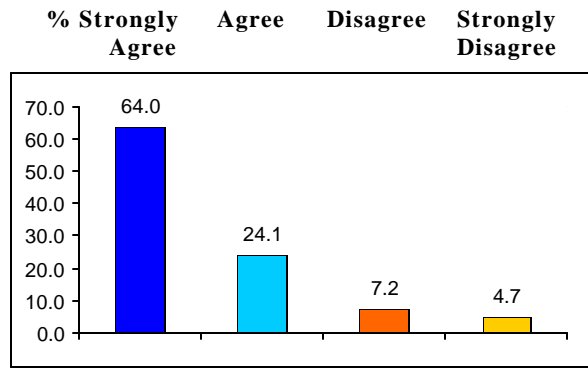
People who have been hurt by the Enron scandal are justified in filing a lawsuit against Enron.



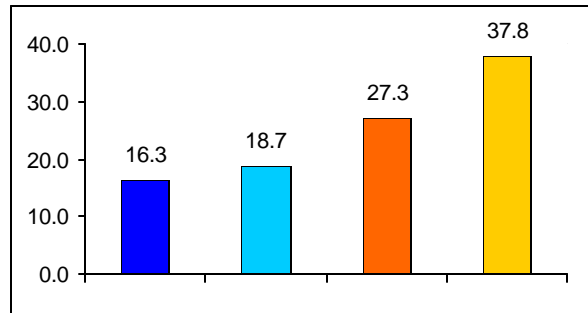
People should know better than to invest in large corporations in the future.



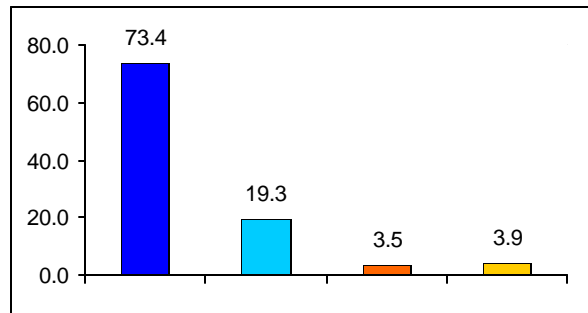
People who are hurt by future corporate scandals like Enron are justified in filing suit against those corporations.



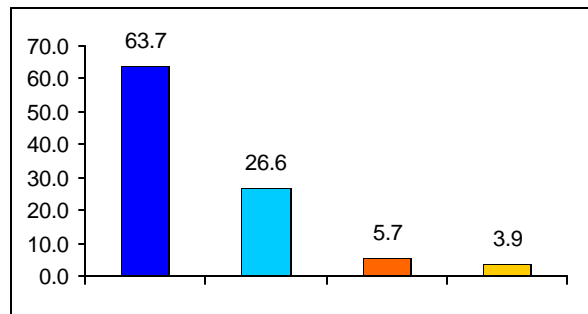
It is unlikely for competitors to conspire together even if it increases their bottom line.



There are far too many frivolous lawsuits today.



Government regulations that make CEOs personally responsible for the accuracy of financial information about their company are critical.



These regulations will be effective in preventing future corporate scandals like Enron's.

