Mocking Corporate America: The State of Anti-Corporate Bias, & the State-of-the-Art Mock Trial
I hate large companies. I absolutely despise them. I think they are what is wrong with this country. .... I feel that they are sort of taking the place of government. I mean, our government is Enron, Wal-Mart, pharmaceutical companies, and big executives. .... They have taken the American dream, smashed it, drawn a picture of another one, and they are mass-selling it to everybody. It is kind of like there is no room anymore.

[The Plaintiff] did nothing to cover himself. He did nothing to prevent this...I feel like he is suing because it is just a big kick in the pants. The company is making a bunch of money that he could have made if he would have just stepped up his game and completed the work that he said he could do... [The Company’s] goal was to be enriched by this project, and that is not unjust. It is their right to make money off their product.

These statements, by all appearances, represent two very different takes on the value of corporations and the personal responsibility of those who deal with them. The first is very much the statement of an anti-corporate juror that defendants would naturally try to avoid. The second is very much the statement of a ‘high-personal responsibility’ juror who could help corporations by placing a greater burden on individuals.

Surprisingly, both statements were made by the same mock juror, on the same day, in reaction to the same case. These apparently disparate statements were made by a mock juror who participated in a mock trial exercise conducted before a live audience on July 17, 2006, in Denver, Colorado. Twenty-three mock jurors heard summary arguments regarding a contract dispute between a fictional individual and a fictional large company (see “The Mock
One of the 23 mock jurors was a 22-year-old male, high-school-educated service industry employee who voted Socialist in the 2004 election – an obvious strike for the average corporate defendant. Yet this juror, Travis, made both of the statements you just read. The lesson of Travis’ reaction, as well as the reactions of the other mock jurors, is this: Anti-corporate bias is real, it is intense and it is a bias carried by a large proportion of the jury pool across the country. But a focus on the plaintiff’s personal responsibility, combined with a positive offense on the defendant company’s part regarding fairness and responsibility, can go a long way toward encouraging jurors to view your case in light of its own merits, not on the basis of a more generalized anti-corporate bias.

This story follows the varying perspectives of four jurors.


Persuasion Strategies, a service of Holland & Hart LLP, has completed the fourth year of an ongoing National Juror Survey Project. Since 2003, we have conducted an annual scientific public opinion poll involving a minimum of 500 randomly selected and stratified households. The questions we tested grew from our mock trial research with thousands of mock jurors over the years. All 500 jury-eligible respondents were over the age of 18 and were either licensed drivers, registered voters or both. Focusing on the nation’s jury-eligible population, this research project examines attitudes relating to the status of corporations within America’s legal system. Now with 2,000 total participants, results identify important trends in the public’s attitudes toward corporate legal responsibility and misconduct. Any references to specific relationships between variables are based on statistical significance at a .05 level or less. For more information, please visit us at www.persuasionstrategies.com.

The Trial Context: Baseline Attitudes

July 6, 2006: Reports of Ken Lay’s sudden and unexpected death headline domestic news and reawaken public awareness of a corporate scandal that has become a symbol in the popular imagination, part of an apparent pattern that also includes WorldCom, Tyco, Adelphia, Arthur Andersen, Halliburton and, depending on who you ask, the rest of corporate America as well. On this same day and in this context, a 19-year-old Democrat and college student named Ali receives a phone call. Like others who might have received a jury summons in the mail on that day, Ali is being invited to become part of the American legal process. She doesn’t know it yet, but Ali is being recruited for a mock trial. When offered the opportunity to earn $150 by participating in a research project, Ali is surprised that the caller isn’t selling anything, and is intrigued by the idea of supplying her opinions on a current issue. She listens to the offer, and answers a number of screening questions about companies and individuals she might know. Ali doesn’t know her phone number was selected using a “random digit dialer” within the Denver County trial venue, and the caller is verifying her demographic traits: sex, age, education, and occupation, in order to make sure that Ali and roughly two dozen other research participants will ‘look’ like a typical Denver County jury. Ali passes the screening test, hesitantly decides to participate and agrees to show up at a downtown office building 11 days later.

July 17, 2006: Ali checks in along with 22 other participants. Another juror is William, a 67-year-old retiree and union member. As Ali, William and the other jurors check in, each is given a number, name badge and a confidentiality agreement. Before hearing what the project is about, they are led to a room and given small electronic panels. Using the panels, they are asked to record their answers to a number of questions focusing on their attitudes: “Business executives share my values” – the group is evenly split – William agrees and Ali disagrees. “Executives often try to cover up the harm they do” – William disagrees, and Ali agrees along with two-thirds of the other mock jurors. “The government tends to favor large corporations more than ordinary Americans” – Ali agrees, and William is one of only three participants to disagree. A picture is emerging: Ali is a “Generation Y” juror with liberal attitudes consistent with her Democratic Party affiliation, while William, from a generation that predates the baby-
boomers, still has an attitude that is less critical of corporations. On one of the final items, however, “When personal ethics and law conflict with one another, which of the two do you think should be followed?” William, perhaps based on his union background, answers “Ethics,” while Ali, along with two-thirds of the other participants, answers “Law.” After answering these initial baseline questions, participants are about to become mock jurors who will evaluate a case designed specifically to pit those two values against one another.

As Ali, William and the other participants answer these initial questions, their responses are collected electronically and displayed to a group of attorneys gathered in an observation room. It becomes clear that the mock jurors are walking into the research project accompanied by a great deal of skepticism toward corporations and corporate executives. Fully half of the jurors agree or strongly agree that “If a major corporation could benefit financially by lying, it probably would do so.” Two-thirds agree that “The government needs to police corporations more these days.” More than half agree with the statement, “If someone sues a corporation, the case must have some merit.” In short, consistent with the results of national juror surveys (see “National Trends in Anti-Corporate Bias,” p. 10-11), a large number of mock jurors checking in for this project already believe that big corporations possess unchecked power and are prone to dishonesty. In an actual trial, the number holding this attitude would be too large to strike in voir dire. This means that the corporate defendant in this case, Trans-Global Corporation, begins the case with an important psychological burden: to prove that, unlike jurors’ images of most other companies, TGC is honest, responsible and has been fair to Plaintiff Michael Clarke. Carried by nearly all corporate defendants, this burden suggests that the defense plan its case as if it, and not the plaintiff, carry the greatest burden of proof. That advice is most important when faced with an intuitive and compelling plaintiff’s case.
**The Plaintiff’s Case**

Greg Goldberg, a Holland & Hart LLP partner specializing in commercial litigation, white-collar crime, corporate compliance, and a former Assistant U.S. Attorney, was tapped as the ideal person to role-play the Plaintiff’s attorney in this contract case. Presenting a best-case version of the Plaintiff’s argument, the goal was to emphasize that the Plaintiff played a vital role in the development of a new technology, and based on promises made by the Defendant corporation, TGC, was owed additional compensation. Goldberg began with a simple theme:

*This case is about honesty and fair dealing, and what can happen when individual innovation, effort and dedication meet corporate greed. In this case, Trans-Global Communication took the fruits of my client’s labor, worked behind the scenes to trick him out of it and put $50 million into its corporate coffers.*

In a 30-minute summary argument, Goldberg emphasized five points: 1) Clarke had the unique skill set TGC needed to get its product to market; 2) both a letter agreement and an employment agreement mentioned “additional benefits” due to Clarke based on success of the product; 3) e-mail evidence indicates that TGC was motivated by a desire to avoid making additional payments to Clarke; 4) TGC made very high profits on this program, of which Clarke is only asking for 5% of one year’s profits ($2.5 million); and 5) based on TGC’s deception, TGC should pay that same amount ($2.5 million) in punitive damages, as permitted by Colorado law.

As William hears this presentation, he wants to focus as much as possible on the agreement and give the Plaintiff what he bargained for – no more and no less. William’s mindset is typical of many jurors who will distrust a corporation’s fairness, but will apply equal distrust to a Plaintiff’s claims for damages. As the presentation ends, William is again given the electronic panel, as well as a paper questionnaire for open-ended “why” questions. He records his leaning as “slightly in favor of the Plaintiff,” but still uncertain, he writes that the contract is “not too clear on amounts.” Another juror providing her preliminary leanings at this point is Roberta, a 56-year-old, politically independent teacher. She also reports that she is “slightly in favor of the Plaintiff,” emphasizing the agreement, but also referencing the company’s e-mails indicating deception. She may have been more strongly in favor of the Plaintiff, but for the Plaintiff’s signature on the release agreement. She isn’t sure why Clarke would have signed such an agreement.

At this stage, most jurors report a similar leaning: only four jurors out of 23 are in favor of the Defendant, TGC. Only three jurors feel that the Plaintiff’s argument is either weak or lacking in credibility. Most jurors feel comfortable reaching the conclusion that TGC had been unfair to Michael Clarke.

Asked how they would describe the Defendant in a word or a few words, jurors note that TGC’s behavior is typical of a big business looking out for itself or is, less charitably, “greedy.”

**The Defense Case**

A specialist in complex civil litigation and a Fellow of the American College of Trial Lawyers, Holland & Hart LLP Attorney Scott Barker presented the summary argument for the Defendant, Trans-Global Corporation. His mission was to combat jurors’ presumption, at this stage, that they were dealing with a heartless company that had betrayed a promise to a key employee in order to protect the company’s bottom line. Barker’s choice was to focus on the Plaintiff’s power and control in this situation:
This case is indeed about fair dealing and honesty. But fair dealing and honesty is a two-way street. This case is about the fairness and honesty that comes from living up to our agreements and accepting the consequences of those agreements.

During his presentation, Barker made the following points:
1) Clarke was paid well – $372,000 over three years; 2) a 5% agreement on additional payments cannot be found in any of the documents; 3) the references to additional payments referred to any bonus that Clarke might have earned had he performed more successfully; and 4) Clarke was unable to meet the aggressive deadlines demanded in the telecommunications industry. Barker also memorably emphasized that the Plaintiff had three opportunities to get the agreement he may have believed he had in writing: the letter agreement (“strike one”), the employment contract (“strike two”) and the release of benefits (“strike three”). Barker ended by emphasizing, “Mr. Clarke agreed on a deal, and now he should deal with what he agreed to.”

While Roberta listens to this presentation, she finds herself unmoved. She remains “slightly in favor of the Plaintiff” because she feels that a promise of “additional compensation” already exists and doesn’t need to be as specific as the Defense is demanding. William, on the other hand, has changed his mind and is now “somewhat in favor of the Defense.” Believing all along that the issue should be decided based on the contract, William finds it compelling that none of the agreements committed to any specific level of compensation. In William’s mind, this means that it isn’t so much a story about a broken promise anymore – instead it is a story about a careless employee who failed to protect himself.

A majority of other jurors are similarly convinced by Barker’s emphasis on personal responsibility. While the Defense had only four supporters following the plaintiff’s presentation, the tables have turned and the Plaintiff is now left with just four supporters in the group of 23 mock jurors. Virtually all of the jurors who changed their mind on this point identify the lack of clarity in the contract as the main reason why the Plaintiff hasn’t proven his case.

While it is common that attitudes measured during a mock trial will swing in favor of the most recent presentation, it is unusual for the Defense to accomplish such a dramatic swing following such an initially strong pro-Plaintiff leaning. In this case, the effective corporate defense advocacy seems to stem from two factors: 1) Barker successfully emphasized personal responsibility by enumerating the chances that the Plaintiff had to control his own outcomes; and 2) Barker also appealed to the traditionally pro-Plaintiff jurors by defending the basic fairness of the company’s conduct toward the Plaintiff, an approach that he applies to all his corporate defense cases. When asked again to describe the Defendant in one word or a few words, most jurors had moved away from focusing on self-interest and greed, and were instead speaking of fairness, honesty and the company’s competitive needs (see chart, “How Do You Describe the Defendant?” below).

This case is indeed about fair dealing and honesty. But fair dealing and honesty is a two-way street. This case is about the fairness and honesty that comes from living up to our agreements and accepting the consequences of those agreements.
Reaching a Verdict

With the presentations over and the final questionnaires complete, the case now rests in the jurors’ hands. The jurors are separated into three juries, based upon both their demographics and prior leanings. The question now is whether the remaining pro-Plaintiff jurors will rally during deliberations, or whether the emerging pro-Defense consensus will stick. The discussions begin and it becomes clear that the pro-Defense themes find the broadest agreement while the pro-Plaintiff themes have the greatest difficulty surviving the scrutiny brought on by an emphasis on personal responsibility. This result serves as a reminder that counsel’s goal is not just to inculcate a favorable leaning, but to also equip jurors to defend that leaning when faced with argument from opposing jurors.

When discussion in Jury One starts, it centers almost entirely on personal responsibility. Jurors spend the first part of the discussion voicing a “you are bound by what you sign” theme. William, who initially was convinced by the Plaintiff’s case, feels that Barker successfully focused on a perceived promise that was never made explicit in the contract. During discussion, William brings virtually every topic back to the question, “But where does it say that in the contract?” He becomes the kind of literalist that most defendants love to see. While he may still believe that TGC verbally promised Clarke “a piece of the action,” the 67-year-old feels comfortable with the four corners of the document: “You can’t have a handshake anymore. Now you have to have it in writing. Times have changed.” The few pro-Plaintiff jurors in Jury One emphasize the company’s general obligation to do right by Clarke, but cannot communicate that argument in concrete terms. George, 40 years old and self-employed, has remained formally undecided throughout the presentations, but now feels that TGC had been “playing games” with Clarke and that “they promised him something,” so therefore, “they owed him something.” Still, George has no answer to the more forceful replies of other jurors that if Clarke felt he was owed, then Clarke had the responsibility to make sure that the agreement was in writing. A short dialogue between George and Tim, a 39-year-old sales representative, illustrates the role of personal responsibility as the ultimate trump card when low expectations are applied to corporations:

The Mock Case

Designed to explore the frequent tension between personal responsibility and corporate honesty, the mock case used for this exercise pitted a “little guy” employee/developer against a big corporation that had been less than crystal-clear in its communications with that employee. Plaintiff Michael Clarke is a computer programmer who was hired by the Defendant, Trans-Global Communication (TGC), to develop a product to provide telephone service over the Internet which TGC would then market. Clarke worked on this project as a contract employee for three years. Performance reviews during that period show that TGC expected faster results on the project, and, ultimately, TGC did not renew Clarke’s contract for a fourth year. A few months after ending its relationship with Clarke, TGC did go to market with its Internet-based telephone service and earned $50 million in revenue in the product’s first year.

Clarke’s original offer letter mentioned a salary, plus “additional benefits based on the level of success” of the program, and his employment agreement stated that “additional compensation rights accruing during the agreement do not end upon termination of the agreement.” Discovery yielded e-mail messages between executives and inside counsel admitting that Clarke’s contract terms are not clear, and that discussion culminates in the decision that it was “really not worth it” to retain Clarke due to the possibility that he would “pursue additional payments” based on his contract language. Based on this, Plaintiff sues for fraudulent concealment and unjust enrichment and argues that he is entitled to 5% of the product’s profits for the first year. The Defense argues that there was no explicit promise to provide any additional compensation to Clarke.
Discussions in Jury Two follow a similar pattern, but this group also emphasizes the company’s positive acts and the amount of money that the Plaintiff had already been paid in reaching the conclusion that the company has no legal obligation to pay any more. Roberta, who leaned in favor of the Plaintiff in her questionnaire responses, continues to argue in favor of Clarke: “There is part of me that just believes that big corporations tend to not give credit to the individual who has done all the work, and who has got them where they are.” Although she is never moved to trust that the company was being honest, Roberta still comes around to a pro-Defense view because Clarke could have protected himself by refusing to sign the release. While it is a “painful lesson to learn,” Clarke’s signature on the release is legally binding nonetheless. Neither could Joseph, a pro-Plaintiff accountant in the same jury, resist framing the central verdict issue in the language of personal responsibility: “Did the Plaintiff, Michael Clarke, act as a reasonable person for his own protection?” This group’s tendency to focus on the Plaintiff’s personal responsibility mirrors prior research findings that, in a cynical, post-Enron age, jurors are often harder on Plaintiffs for joining forces with a corporation. This impulse, of course, is in the absence of any verdict form question or any jury instruction encouraging jurors to look at the Plaintiffs’ actions: the concept that underlies “comparative negligence” is strong enough that it need not be legally invoked in order to play an important psychological role.

The youngest juror in the group, 19-year-old Ali, emerges as a confident and articulate leader. She identifies with the ethical concerns of the pro-Plaintiff jurors, but still emphasizes the primacy of the contract:

“When we first came in here, they asked us this question, you know “would you go by your personal ethics or the law?” and I think this is a very clear case – we all feel empathy for this guy based on our personal morals and ethics, because it seems like he deserves the money because he was such an integral part of the process. But at the same time there is nothing that legally obliges this company to give him money.”

Continuing this trend, Jury Three is Defense-oriented from the start. In addition to the reasons that compel the prior two juries, this jury stresses that an employee serves at the pleasure of the employer, and that any employer has a right to expect timely results. Even Travis, who voted Socialist in the last election, emphasizes that a company “has every right, if they are not pleased, to terminate a contract.” This strongly held view comes not so much from philosophy as it does from experience. Several jurors agree that if they had promised something and failed to deliver, they would not expect much forgiveness from their employer. Choosing an analogy that may be close to home, Travis explains that if his band signed an agreement to give up royalties, they wouldn’t have any recourse if a song unexpectedly went to number one. In this way, jurors are able to hear a defense theme, translate it into their own terms, and use it to combat the strongest arguments coming from the Plaintiff. All three juries return unanimous verdicts for the Defense.
National Trends in Anti-Corporate Bias

At some point in their lives, approximately seven out of ten jury-eligible individuals have worked for a company that employs more than 500 people. Fully two-thirds of jury-eligible individuals have held a supervisory position in the workplace. Jurors have direct experiences with Corporate America and with managing others, and continue to voice anti-corporate attitudes in response to our national survey questions.

The National Juror Survey Project has become a primary source of statistical information on the state of juror attitudes regarding corporations, executives and corporate responsibility. Some results from 2006 are consistent with previous academic and applied research, while others reveal new insights about juror attitudes.

Consistent Trends: Greater Responsibility, Ubiquitous Deception and Presumption

Responsibility remains a “hot button” concern for jurors evaluating parties in a legal context. Fully 78% of potential jurors agree that corporations should be held to a higher standard of responsibility than individuals.

Jurors also place a greater burden on companies entering into agreements with individuals. On average, jurors assign a company 60% of the responsibility to ensure the terms of such an agreement are clear, while assigning individuals 36% of the responsibility. Simultaneously, 84% agree that companies need to do a better job of testing products before selling those products to consumers. However, results suggest jurors also expect individuals to exercise personal responsibility, with 95% of respondents agreeing that consumers today need to take more responsibility to use products safely.

Jurors continue to assume corporate deception. At 83%, a significant majority of jurors believe if a company could benefit financially by lying, it’s probable that it would do so.

An even greater number of jurors (90%) believe executives often try to cover up the harm that they do. Current survey results confirm jurors’ expectations of deceptive corporate behavior as a stable trend.

Counsel should also be concerned with a third key finding in 2006. Corporate litigants continue to face a jury pool making potentially dangerous presumptions. Nearly four of five jurors (78%) believe if someone sues a company, the case must have some merit. This finding represents a four-year high and stands in contrast to attitudes about jurors’ “presumption of innocence” in criminal cases. Specifically, 77% of jurors from the 2006 survey disagree with the analogous statement, “If the government brings someone to trial, that person is probably guilty.” Jurors’ significant presumption of meritorious civil lawsuits against corporations is a key indicator of the current state of anti-corporate bias in today’s legal system.

Emerging Insights: Government Contrast, Industry Differentiation and Employment Experiences

Current results also support a few emerging trends reflecting juror attitudes toward corporations and corporate executives. For instance, an increase in unfavorable attitudes toward government officials contrasts with jurors’ relatively stable opinions of corporate executives. In 2006, 41% of jurors hold favorable opinions of government officials – down from 56% in 2003. A majority (56%) still hold favorable opinions of corporate executives.

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IF A COMPANY COULD BENEFIT FINANCIALLY BY LYING, IT’S PROBABLE THAT IT WOULD DO SO.

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Focusing On Juror Attitudes

Once jurors complete their verdicts, their first thought, naturally, is that it is time to get paid and head home. However, one more session awaits them. At the conclusion of each group’s deliberations, a trial consultant joins them to conduct a focus group interview designed to explore reasons that may not have been articulated, sound out issues that may not have been addressed and listen to individuals who may not have been given enough of a hearing by their group.

In Jury One, an interview by Dr. Kevin Boully focuses on drawing out two jurors who felt that the Plaintiff should have received some compensation. These jurors were in an ultimately silenced minority, but it is important to learn as much as possible about their reasons in order to probe for possible case weaknesses. So Dr. Boully asks, “How would you have persuaded this group?” This question prompts George to speak more freely about the reasons he supported Clarke:

“They are upper-echelon, he is lower-echelon. They know they’ve got a smart geek down there in the corner who doesn’t know that much about paperwork and about signing agreements and contracts and they say, ‘We can take advantage of him.’”

The interview reveals that despite the Defense win, Barker has not succeeded in building a positive image for the company – a potential vulnerability in the hands of a slightly different jury composition. Jurors describe TGC as “a big company,” “big money,” “sneaky,” “greedy” and a “typical corporation.” The very salience of these qualities, however, increases the relevance of personal responsibility. William keeps emphasizing the contract and the Plaintiff’s oversights as an answer to

Jurors are also willing to evaluate corporations on an industry-by-industry basis. One key 2006 finding demonstrates that jurors’ attitudes about corporations in litigation are complex. For example, a greater percentage of jurors hold unfavorable opinions of oil and gas companies (66%) than of pharmaceutical companies (47%). However, these opinions do not necessarily translate to jurors’ presumption in lawsuits, where 81% of jurors agree that if someone sues a pharmaceutical company, the case must have some merit. Slightly fewer jurors (72%) agree that if someone sues an oil and gas company, the case must have some merit. Clearly, jurors perceive various industries differently.

Finally, jurors’ individual employment experiences are critically linked to their evaluation of corporate conduct. For example, there exists a statistically significant relationship between supervisory experience and jurors’ beliefs that ethics should be given greater weight than the law when evaluating a company’s conduct.

Similarly, jurors with supervisory experience are significantly more likely to believe ethics should be followed when ethics and the law conflict.

These and other significant relationships demonstrate how jurors’ own experiences affect their attitudes toward corporations.

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every criticism of TGC’s behavior, and adds that the easiest solution would have been for Michael Clarke to have hired a lawyer before he signed any agreements. Asked whether he thought TGC may have been deceptive, he answers, “It isn’t deceptive, it’s business.”

Jury Two holds a more positive view of the Defendant, describing the company as “savvy,” “powerful,” “competitive,” “smart” and “strategic.” Dr. Karen Lisko uses the interview time to look further into potentially unexpressed weaknesses of TGC’s case in order to maximize the value of the research project. Perceived weaknesses include: 1) the company’s failure to show that it could have completed the project without Clarke; 2) the company’s own responsibility to be clear in the agreements it drafted; and 3) the company’s internal communications which, while not necessarily deceptive, indicated an intent that was at least “sneaky” when executives were trading ideas on ways to cut Clarke out of the deal. Roberta remains pro-Plaintiff and becomes even more so during the interview. She feels that the $5 million in damages, a figure roundly scoffed at by the other jurors, is a reasonable amount in comparison to the company’s profits. “I’ve always been for the underdog,” Roberta explains, “not the big person with all the power.” For others in the group, however, it is clear that the “big guy/little guy” contrast has no legs as long as the “little guy” had some power in his own hands to defend his own interests.

Dr. Ken Broda-Bahm’s interview of Jury Three focuses on the basic question of why the group placed greater responsibility on the individual to clarify the contract, instead of on the company. In the end, the group’s answer is that companies act in their own self-interest, and individuals should know that and act to protect themselves. It becomes clear throughout the discussion, that most jurors hold deeply negative views of corporations in general – they are too powerful, too influential with the government, too hierarchical and too blind to the consequences of their actions. Corporations fail to value the individual, and they fail to protect the environment. Motivated by a value-free bottom line, corporations cannot be trusted to act honestly or ethically.

Yet, it is the very salience of these attributes that allow jurors to reconcile anti-corporate bias with a pro-corporate verdict – to bridge, in effect, the two very disparate opinions which began this article: Travis’ views that corporations are naturally evil, yet still less responsible than individuals who do business with them. In the final interview, Travis explains:

“I was kind of conflicted. In one sense, I am all for the little man, the Plaintiff. He did put a lot of effort in and he was led around a bit. On the other side, it was kind of his fault that he was led around. He did not read into as much as he should have. He did not think about it. There were a lot of things he missed that were right there in plain sight. He should have said, “Whoa, whoa, whoa, what is this?”

So the bright side of a tarnished image is that low expectations for corporations create higher responsibility for individuals. That, however, does not mean that corporations can afford to ignore the positive story relating to their own responsibility. In appealing to those jurors who start with a pro-Plaintiff bias, building a positive image is more important than ever. As Ali explains in the final interview, companies need to differentiate themselves from jurors’ perceptions of what corporations “in general” tend to be like:

“I don’t think that we’re talking about corporations in general or people in general. In this specific case, he got what he was entitled to and nothing more. I don’t think we can say that just because corporations in general are immoral or greedy, that this one is. I don’t think we can make this assumption.

In the end, three main strategies that apply to corporate defense cases across the board played the greatest role in helping the Defense in this case:

1. Embrace a positive persuasive burden to tell a positive story about the company that differentiates it from other companies.
2. Target your appeals to the tougher pro-Plaintiff audience, emphasizing not only legality, but basic fairness as well.
3. Focus on the Plaintiff’s power and choices as they bear upon the Plaintiff’s ability to protect his own interests.
The value of mock trial technology lies in extending the eyes and ears, and the understanding of the mock trial researchers and clients. Several new advances have substantially advanced the concept of the state-of-the-art mock trial. This note will discuss several of these technological elements and explain their role in maximizing the value of your research.

The purpose for mock trial technology is twofold. First, it assists in the research by enabling the real-time broadcast of presentations, deliberations and interviews to be viewed by the trial team and clients, as well as recording the mock trial for later review. Second, it serves as a valuable test of the hardware, software and teamwork that may be needed in the actual trial.

The Wizards:
Although most people think that the term “technology” only applies to the equipment, the word also encompasses the knowledge and skill of the user. The most important choice in implementing technology for a mock trial is finding the right people behind the curtain. In many senses, that starts with you, the decision-maker, knowing what is available and what different options add to the value of the research.

Mock trial research in many urban venues can be hosted at a facility, such as a focus group suite, that already has audio and video wiring built in. In these settings, the staff to run the systems is usually bundled in the package. More often, however, when research is conducted in smaller rural venues, a technician needs to custom-build the audio and video setup inside a hotel or conference center. Designing and implementing these
Camera operators in each jury capture a more detailed view of jurors’ expressions and body language.

schematics can be complicated, and the designer must have extensive mock trial experience to avoid critical problems during the compressed on-site schedule. This includes experience working with the team who will have to install and wire all of this equipment.

A good part of the complexity is driven by the need for closed-circuit capability, allowing clients to view video of juror reactions in real time. Thankfully, advances in recording equipment and media allow for simpler equipment in each of the deliberation rooms. However, transmitting video signals from the deliberation rooms to the client’s viewing location still requires that staple of the electronic age: a cable. This means a skilled crew is needed to install the equipment, wire it all together, deal with unexpected glitches and complete everything, usually overnight.

The most visible person using the technology during a mock trial is the camera operator. He or she not only pans and zooms for captive recording, but also coordinates various feeds to the viewing room. This means operating systems that allow switching between the video from two cameras in the room and a computer signal from a Trial Presentation program. The best systems allow participants in the closed-circuit room, as well as viewers of the recording, to see the speaker, exhibits and jury at the same time. This is done by displaying picture-in-picture, with either the computer presentation or a reaction shot of the jury laid over the primary image.

Listening In:

Thankfully, wireless audio transmission eliminates the need to string even more cable, and during deliberation and interview sessions involving multiple groups, also solves the problem of trying to simultaneously listen to different discussions at the same time. Transmitters in each room broadcast the audio on different channels. On specialized headsets, closed-circuit viewers select the appropriate channel for the desired video display. This system allows the viewer to flip from one group to the next by just turning his or her head and turning the knob on his or her belt.
The Best View of Deliberations and Interviews:
During deliberations and interviews, most clients will opt for a less expensive, static, wide-angle camera shot without an operator in the room. But when the budget allows, having operators with each jury allows for a better view of each mock juror as they speak, providing greater detail of their expressions and body language.

The Recording Format:
The ability to quickly review all the footage is a critical task to evaluating jury interaction. Recording has long been associated with the most common media, so we often refer to the process as “taping” the event. Today’s digital technology includes disks, DVDs and hard drives that can be used to record and distribute the video from the mock trial. Digital recording is cheaper, faster to duplicate and more convenient to view.

One of the newest innovations is a small handheld recorder which makes a digital recording of the mock trial audio and video on its own hard drive: the equivalent of Tivo with a screen, which allows digital video tape recorders, audio cassette recorders and even the field monitors to be combined into one small device. Instead of waiting 12 hours to duplicate 12 hours of tape, digital files can be saved or transmitted in a just a few minutes. The video files can be viewed by counsel, clients or members of the consulting team instantly – even on the plane ride home.

Wireless Questionnaires:
Digital technology doesn’t just allow faster recording and transmission, it has also opened up a quicker and more flexible way to collect juror survey data during a mock trial: The InterView System. Using a Windows CE device (essentially, a large “Palm Pilot”), mock jurors enter their answers to closed-ended questions by simply tapping their preferred answer on a hand-held touchscreen. The collected responses are sent wirelessly to a “mother” computer which can instantly display the jurors’ answers, allowing consultants and clients to track the effectiveness of the arguments in real time. The advantages of this computer software also include the ability to ask branching questions based on jurors’ previous responses: In other words, if the juror responds that he or she is leaning pro-plaintiff, the next question will be targeted to a pro-plaintiff juror. A pro-defense juror will see a different question.

Trial Presentation:
Finally, one of the original reasons to conduct a mock trial – to practice arguments and delivery – applies to technology as well. Trial technology is built-in to many of today’s remodeled courtrooms. Any perceived disadvantage in being “too slick” has evaporated. Fact-finders may even view a lawyer’s inability to use the display tools at hand as a poor reflection on his or her competence and desire to teach the complexities of the case.

The state-of-the-art mock trial allows you to practice with all the equipment and the people who will be assisting you at trial – an important benefit of mock trial research.

The Budget:
The decision to conduct mock trial research involves important budget considerations. But ensuring that all the pieces work as planned is not easy, and as with nearly everything else, you get what you pay for. When compared to the cost of the attorneys, trial consultants, support staff and venue rental, the cost for good-quality technical support is put in perspective. The value of the dry run, as well as the imperative of gaining and retaining as much information from the research as possible, are both served by budgeting for the best of what current mock trial technology allows.
Did you know that a honeybee never sleeps? She works constantly, making 154 trips out of the hive collecting nectar and transforming it into just one teaspoon of precious honey.

Persuasion Strategies works tirelessly to distill the facts of your case into its most persuasive message—for a jury, judge, or arbitrator. Great research. Even better case strategy. Now that’s sweeter than honey.