

Recent Corporate Scandals and Their Effect on Jurors

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Enron, Arthur Andersen, WorldCom, ImClone, Tyco, Adelphia, Global Crossing, Martha Stewart, Merrill Lynch, AOL Time Warner, and a local addition, HealthSouth. It is almost impossible to turn on the television or open the newspaper without being confronted with yet another corporate scandal. Reports of financially troubled companies and their questionable accountants are commonplace. Accusations of insider trading by high profile shareholders are routine.¹ In the wake of these scandals, Americans are faced not only with losing their jobs, but also with the demise of their stock portfolios and retirement savings.

As the media exposes these corporate wrongdoings, prospective jurors everywhere are forming their opinions. From their point of view, all corporations are “guilty by association”.² “The typical juror today is not willing to accept that there are only a few bad apples”, stated Arthur Patterson, a psychologist with DecisionQuest. “The good companies, not the bad ones, are considered the exception.” DecisionQuest, in partnership with the Minority Corporate Counsel Association, recently conducted a juror attitude study, revealing alarming conclusions. The research was based on a national telephone poll of 1,000 jury eligible subjects, as well as a series of juror perception groups in Texas, Louisiana, Mississippi, Illinois, and California, which were ranked by the U.S. Chamber of Commerce as the most notorious venues. Juror perception groups were also held in Delaware and Kansas, which were among the states ranked fairest to corporations according to the Chamber survey. Out of over 1,000 jury eligible subjects polled nationwide,

- 76 % are angry with corporate America
- 76% think the way executives are paid promotes corruption

- 73% believe auditors cover up for their clients
- 71% expect managers and executives to lie on the witness stand
- 78% believe many companies destroy documents to avoid responsibility
- 85% think large corporations hide the truth about the dangers of their products

“These results illustrate not only deepening distrust of corporations, but that recent events have shaken even the strongest corporate supporters,” summarized Dr. Galina Davidoff, director of the study. “For the first time, jurors feel that they have been touched personally by the actions of the Enrons and WorldComs – they have seen their 401(k) plans devastated and they attribute this to bad actions by corporate America.”

The study reveals disturbing trends in jurors’ discernment of corporations. “Most jurors used to believe that audits serve as checks on corporate conduct and uncover fraudulent activity. This perception is almost gone.” In addition, the great majority those surveyed think that the system of corporate governance promotes corruption, especially in regard to the way senior executives of large companies are paid.

The deterioration of corporate America’s image can be especially felt in the courtrooms of the country. A juror whose investment portfolio or 401(k) plan has dramatically decreased in value is unlikely to sympathize with any corporate wrongdoing.³ Patterson believes the modern trend of billion dollar verdicts is a reflection of this distrust of executives, not only in what they say, but also in what they do. “To punish them, jurors believe it takes billions with a ‘B.’”⁴ And that is exactly what jurors did in 2002. In just one year, the total value of jury verdicts more than tripled when compared to 2001.⁵ Among the most successful cases were lawyers who took on Big Tobacco. Philip Morris was hit with a \$28 billion verdict. According to DecisionQuest’s survey, in the past, jurors believed that people chose to smoke and they were responsible for that choice. “Now, the

common belief is that tobacco companies make money by addicting people to their cigarettes through chemicals and advertising. When jurors were asked for examples of bad corporate behavior, tobacco companies almost always came up first.”

This growing skepticism has forced attorneys to reevaluate their trial tactics.⁶ “In this survey, the attorneys who represent corporate America learned that they have their work cut out for them more than anyone could have anticipated,” affirmed Veta Richardson, of the Minority Corporate Counsel Association.⁷ The Wall Street Journal reported that defense lawyers are going to great lengths to spot vindictive jurors.⁸ During jury selection for a trial involving a rollover death against Ford Motor Company, in Los Angeles, defense lawyers asked fifty prospective jurors their reaction to this statement: “Corporate executives will lie to increase their profits.” More than half agreed. Rosemary Watson, a postal clerk, reasoned: “I don’t have any proof of that. It’s just an image in my mind that I’ve gotten – news articles, things I’ve heard on the news, and some of the things that have been happening.” Subsequently, the case was settled under a confidentiality provision.

But it’s not only defense attorneys that have their work cut out for them. “We observed a great deal of resentment among our research subjects toward plaintiff attorneys who represent people in class-action lawsuits,” stated Davidoff. Survey participants spoke favorably of tort reform that would stop class action lawyers from “making fortunes off of plaintiffs’ suffering, while giving little or nothing to the plaintiffs’ themselves.” In order to ameliorate this perceived injustice, “respondents said that they would award more money in order to make sure that at least something would trickle down to the actual people who had suffered.”

Regardless of which side the lawyer represents, jurors are on their guard. “[T]hey expect plaintiff attorneys to pull on their emotional strings and defense

attorneys to confuse them with complex explanations and terminology,” says Davidoff. “Personal attacks on plaintiff attorneys backfire, because jurors equally resent corporate attorneys and see personal attacks as distracting and disrespectful to everyone present.” She has this advice for both sides: “put yourself in the jurors’ shoes and conduct the trial so that they perceive you as helpful for their job, clear, and well-organized. Never try to put the other attorney down – jurors resent it, because you both are members of the same profession.”

- ¹ Malini Kochhar, *Capitalism and Financial Scandal* (last visited April 23, 2003) <<http://www.objectivistcenter.org>>.
- ² Michael Orey, *Attorneys Find Jury Pools Tainted by Antibusiness Bias* (last visited April 23, 2003) <<http://www.wsj.com>>.
- ³ Barry Shanoff, *Jurors Strike Back* (last visited April 23, 2003) <<http://www.wasteage.com>>.
- ⁴ Tamara Lewis, *Business Scandals Rock Juror Attitudes*, Franklin County Trial Lawyers (last visited April 23, 2003) <www.fctla.org>.
- ⁵ David Hechler, *Total Value of 2002’s 100 Largest Awards More Than Triples* (last visited April 23, 2003) <<http://www.verdictsearch.com>>.
- ⁶ Michael Orey, *Attorneys Find Jury Pools Tainted by Antibusiness Bias* (last visited April 23, 2003) <<http://www.wsj.com>>.
- ⁷ Galina Davidoff, *Distrust Toward Corporations*, (last visited April 23, 2003) <<http://www.mcca.com>>.
- ⁸ Michael Orey, *Attorneys Find Jury Pools Tainted by Antibusiness Bias* (last visited April 23, 2003) <<http://www.wsj.com>>.