

Jurors React to the Great Recession

by Patrice Truman, Esq.
Jury and Trial Consultant

"In prosperity prepare for a change; in adversity hope for one."
James Burgh, British politician & author advocating free speech & universal suffrage,
1714-1775

This long and severe recession, coined as the Great Recession, has shown its influence on jurors during jury selection and deliberations. Jurors show a greater interest in economic matters, perhaps due to media onslaught of the country's condition. Indeed, in terms of damage awards it seems that jurors do not feel as generous as they did in years past when a prosperous economy prevailed. This newsletter examines the ramifications of an economy in a state of flux, and of how jurors have reacted to it based on statements made in voir dire and in post trial interviews.

The Hardship Excuses are More Numerous and Poignant.

Prospective jurors line up, as if analogous to a bread line, and privately offer their hardship excuse to the judge. The common thread among each personal story is the tone of uncertainty and insecurity about their present job or their prospects for seeking employment. There seems to be anxiety about whether they will rebound financially or take a deeper dive down. Many of the excuses express a troubled financial family situation. Within the past year, it now seems to be the standard to have the judge call in two or even three panels of prospective jurors for a trial lasting two or more weeks. Accordingly, this also reflects a more empathetic tone from the bench in anticipating excuses. Whereas, in the past, every jury pool was comprised of some working poor, now the unemployed or financially strapped jurors include all income levels.

Jurors Speak More Candidly About What Caused their Economic Hardship.

In times past, the recitation of one's economic troubles evoked some awkwardness; now, prospective jurors speak more candidly about what caused their economic hardship. Admissions of a job loss, a real estate investment that turned bad, or mismanagement of their personal income are revealed in open court. The concentration of foreclosures carries less stigma than in times past. The predicament of bankruptcy appears less humiliating as it surfaces more frequently when jurors are questioned about it in voir dire or on a juror questionnaire.

Jurors Express Concern about the Trial Taking Too Much Time Away From Their Job or Job Search.

In better economic times, jurors expressed more mundane concerns about the trial taking up too much time as it related to the imposition on their lives. Now, the concern is expressed more vociferously. For those prospective jurors who are employed, their concerns are about the tenuousness of their job situation. They worry aloud that a long absence from their work could negatively impact their job performance and employment stability. They indicate that employers are less lenient with absences and more demanding about project completion. Later, after trial concludes, these jurors are vocal about how to improve trial expediency as if to forewarn attorneys not to repeat this error given this economic climate.

In the end, jurors regard even having a job with more gratitude than in days past. Hence, they want to be at work, present and contributing, rather than sitting in the courtroom.

In these trying times, jurors hold strong opinions about what cases they believe should not have made it into the courtroom and "should have been one to settle." Mediation and settlement, although not fully understood, seems to be front and center in their minds.

Prospective Jurors Voice Tough Stances About Large Damage Awards Whereas Deliberating Jurors Often Do Not Deliver the Award.

Although the McDonald's verdict continues to be mentioned in nearly every voir dire and has grown in mythical ways since its announcement in 1994, jurors appear even more reticent to hand out large damage awards in financial downturns. Social psychologists write how bad news makes people feel worse and spend less. This seems relevant in the deliberation room too. The act of awarding damages ranges from cautious to nothing at all, and can be fraught with negativism and antagonism. The attitude of "I had this happen to me and I never got anything for it" seems more pronounced during an economic crisis. The exception occurs when a jury feels substantial anger against defendants; consequently, awards may rise. But, overall, a recession can bring to the table smaller damage awards.

The More Cynical Jurors Initiate Discussion of Damage Awards.

The ill effects of an economic downturn, such as double digit unemployment, can distort reality. This surfaces when the more cynical jurors initiate a voir dire discussion with the question about "how many millions" the plaintiff will be requesting at the conclusion of the evidence presentation. Given this economy, prospective jurors seem to be more brazen about damages inquiries. Accordingly, counsel should assume the question is posed with the intent of challenging the damages requested, later in deliberations. Notably, the cynicism appears equally distributed toward both sides. Insurance companies and large corporations, often perceived as contributing to the economy's dire straits, elicit jurors' opinions of mistrust and resentment.

Overall, jurors find it more difficult to hand out verdicts totaling significant dollars because they have made big adjustments in their own lives and continue to feel vulnerable when news does not indicate economic improvements. Before the recession, a high number may have sounded easy to argue for in a damage award, but now may sound like a significantly greater number than before.

Age Groups Most Affected By the Recession.

A Pew Research Center trend study conducted in February and March of 2009 revealed that Americans age 65 and over feel that they have escaped the full impact of the recession because they had already downsized their lifestyles before the full fury of the downturn took hold. By contrast, the group considered in middle age, 50-64, are most burdened by the recession and the impact on their nest egg from the financial markets. Their financial future depended on a strong market economy to secure their retirement lifestyle. Lastly, the 18-49 year old age group is most impacted by the unemployment forecast, as they try to secure their place in the work force. Despite this, they are optimistic and willing to take on more menial work for the time being until the recession eases.

These findings parallel sentiments expressed by jurors. Indeed, the most reliable plaintiff jurors tend to be those who are in middle age, satisfied with their jobs, secure with their career pursuits, and express empathy for others. Indeed, they allow themselves to identify with victims, unlike the typical defense juror. But, in a bad economy the discussion focuses on others' misfortunes, thus plaintiff's plight does not seem so unusual. Recall that in deliberations, jurors spend about 50% of their time comparing both plaintiff and defendant's evidence with their own life experiences or experiences of someone they know. When times are tough for nearly everyone in some way, the objective of righting a misfortune for another person may seem overwhelming, particularly when so many feel overburdened.

Trial Strategy During a Recession.

When a trial takes place in the throes of a recession, counsel must be particularly attuned to these important attributes associated with persuasive evidence presentation:

- Keep the presentations, from voir dire to closing argument, conversational but concise. Ask the pertinent questions.
- For plaintiff side, never seem greedy, and for the defense, avoid the appearance of callousness. Humanize the client's motives and actions.
- Present a theme to justify why the client should win, and this theme should fit within the jury's value system, understanding that certain values may be influenced based on socioeconomic conditions.
- Explain why a certain result is fair after advising the jury about certain weaknesses of the case before the opposition voices their assessment of the evidence and distorts facts.
- Teach instead of argue. This keeps the trial interesting and worthwhile for jurors. If they feel that they learned something from the experience it turns into a benefit that they had not imagined at the start of trial. In the end, the trial could provide a welcome distraction, rather than feelings of imposition.

Conclusion.

On a daily basis, jurors sense that the economy dominates the news. More personally, its ill effects cause some challenges to their lives or to someone they know who struggles to get by. Priorities are shifting; for instance, conspicuous consumption is no longer in vogue. The courtroom remains one of the first venues to reflect societal changes based on the voices of prospective and actual jurors. Counsel who stay attuned to jurors' opinions and attitudes have a better chance of keeping them focused and engaged with the case so that a fair verdict concludes the trial.

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