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Free Speech, Due Process and Trial by Jury

How the COVID Experience is Transforming Juror Attitudes Toward Corporate Defendants and What Lawyers Can Do About It

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The COVID-19 pandemic has left a lasting impact on society, particularly in shaping public perceptions of corporate America. Media coverage during the pandemic, often sensationalized and focused on corporate failures or profiteering, has influenced public narratives about corporations. These narratives were further amplified by social media, where individual experiences and opinions shape jurors' preconceived notions long before they enter the courtroom. Additionally, the psychological toll of the pandemic — marked by stress, fear and uncertainty — has deepened cognitive biases, making jurors more rigid in their beliefs and more prone to suspicion and negative views of corporations.

This post-COVID environment of heightened distrust means that even a corporation with compelling evidence in its favor may struggle to counteract the perception that it acted unfairly, especially when jurors believe that the company contributed to broader societal problems during the crisis. Recent high-profile jury verdicts evidence the shift in how jurors view corporations, driven by the fears and uncertainties that emerged during the pandemic. These verdicts echo the trend I have seen in my recent trials and jury exercises: Jurors are more critical of corporate defendants. Five key attitude shifts demonstrate a growing distrust and cynicism toward corporate behavior.

1. Increased Skepticism Toward Corporations

Post-pandemic jurors have a heightened skepticism for the motives and practices within corporations. Increasingly, corporate America is getting zero benefit of the doubt in the jury deliberation room. Jurors are more critical than ever of businesses, often viewing the business world through a lens of suspicion and corporations as prioritizing profits over people.

This skepticism is rooted in a broader societal context of the pandemic, which has illuminated the vulnerability of employees to corporate whims and the inequity that results. Jurors are increasingly sensitive to whether corporations treat their workforce fairly, which can lead to a more negative view of corporate defendants in the courtroom. A perception that corporations exploited the pandemic as an excuse to terminate or reduce compensation for employees while increasing executive compensation can significantly impact juror decisions, making them more likely to side with plaintiffs who present themselves as victims of corporate excess and greed.

2. Heightened Empathy for Employees

Alongside skepticism toward corporations, I have seen a notable increase in empathy for workers in employment disputes. Because so many individuals have had firsthand experience with job insecurity, health risks and

emotional distress during the pandemic, jurors are more inclined to support the claims of plaintiffs in workplace disputes. This shift in perspective is particularly evident in disputes involving workplace safety, wage disputes and wrongful termination.

Jurors may now view workers as resilient individuals who have shouldered the burden of the pandemic's economic fallout. As a result, they are prone to identify with the personal stories and struggles of plaintiffs, leading to a more sympathetic view of those who challenge the real or perceived injustice and inequality of corporate practices.

3. Demand for Corporate Accountability

The pandemic-induced societal distrust has driven an expectation for corporate accountability. Jurors now seek evidence of corporate social responsibility, demanding that companies demonstrate ethical practices and a commitment to the welfare of their employees and communities. This shift reflects a broader societal expectation for transparency and accountability in corporate governance.

Jurors may favor companies that actively engage in socially responsible initiatives, such as supporting charitable causes, prioritizing employee well-being and practicing sustainability. Conversely, corporations perceived as failing to uphold these standards may face even more skepticism and distrust in the courtroom. This demand for accountability is likely to influence jury decisions, as jurors are more likely to side with plaintiffs who argue that corporations have neglected their responsibilities.

4. Focus on Health and Safety

The pandemic has heightened awareness of health, privacy and safety issues, leading jurors to scrutinize corporate compliance with health regulations, privacy regulations and workplace safety standards. Jurors are

now more attuned to the importance of ensuring safe working conditions, especially in industries where health risks are prevalent.

This increased focus on health and safety is particularly likely to influence cases involving pharmaceuticals, product liability, personal data and public health violations. Jurors may be more inclined to hold corporations accountable for lapses in safety protocols, especially when plaintiffs' attorneys present a compelling narrative that a company prioritized profits over the individual's health, privacy or safety. This shift in perspective underscores the need for corporations to prioritize safety measures and demonstrate compliance with health, privacy and safety guidelines to maintain public trust.

5. Emphasis on Transparency

In the wake of the pandemic, jurors have become more sensitive to the importance of transparency in corporate communications. The widespread perception that historically respected organizations misled or withheld information from the public about the crisis has given rise to a universal distrust of authorities and a corresponding desire for clear and honest communication. Companies that articulate policies and decisions transparently may garner more trust from jurors, while those perceived as evasive or dishonest may face backlash.

This emphasis on transparency extends to how corporations manage crises and communicate with stakeholders. Jurors may be more likely to support claims against companies that fail to provide clear information about their practices, particularly in situations where public health, privacy and safety are concerned.

IMPLICATIONS FOR LEGAL STRATEGY

These profound changes in juror attitudes toward corporate America have significant implications for legal strategy in the post-COVID era. Legal

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professionals must adapt approaches to align with the evolving perspectives of jurors. While it is impossible to draft a comprehensive response for all cases, here are three approaches I am emphasizing in trial presentations post-COVID:

Tailoring Messaging: Corporate defendants should acknowledge and tailor their messaging to resonate with jurors' increased skepticism toward corporations. By emphasizing corporate accountability and ethical practices, we can work to build trust with jurors. Presenting evidence of a company's commitment to employee welfare, privacy and community support may counteract any preexisting negative bias.

Health and Safety Considerations: In cases involving workplace safety or public health, we have emphasized compliance with health regulations and safety protocols. Jurors will scrutinize corporate practices in this regard, so I work from the start to demonstrate a corporate defendant's commitment to health and safety.

Fostering Transparency: We must prioritize transparency in all our communications with jurors. Clear and honest presentations of evidence and

case facts can help build credibility and trust. Acknowledging and addressing potential concerns or questions upfront can enhance juror confidence in the case.

CONCLUSION

The COVID-19 pandemic has fundamentally transformed juror attitudes and perspectives toward corporate America. Their increased skepticism, heightened empathy for employees, demand for accountability, focus on health, privacy and safety, and emphasis on transparency are shaping the outcomes of legal cases in profound ways. By adapting our legal strategies to align with these evolving attitudes, legal professionals can better navigate the complexities of the post-COVID trial landscape and advocate effectively for their clients. Understanding the psychological underpinnings of these changes is essential for success in a courtroom that has been irrevocably altered by the pandemic.

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