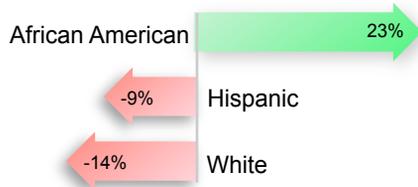


Damage Propensities

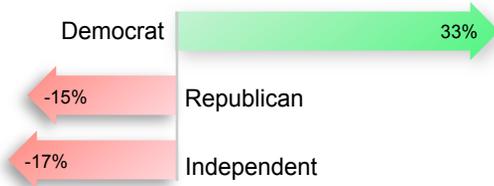
Group's Propensity to Award Higher (or Lower) Damages than Average

LOWER ← → HIGHER

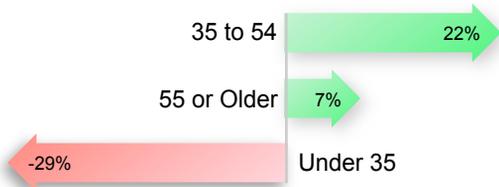
RACE



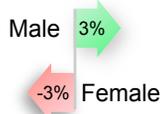
POLITICS



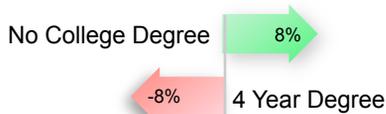
AGE



GENDER



EDUCATION



Trial Survey Group

Quantifying the Impact of Juror Demographics on Damage Awards

Chris Denove

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Every trial attorney has an opinion of which demographic groups are likely to be plaintiff or defense orientated based on prior personal experiences and generally held beliefs. While these generalizations are often directionally accurate, they are anecdotally based and therefore cannot be quantified. The underlying research that forms the basis of this article set out to definitively quantify how much more (or less) various demographic groups award in damages across a variety of personal injury cases.

To accomplish this we administered six online mock trials throughout California. Because we wanted to quantify the results independently for each key demographic group, each mock trial consisted of more than 100 jurors and covered a range of cases from simple auto accidents and premises liability to those involving emotional distress.

We informed the mock jurors that the defendant had been found liable in each case so that their responsibility was limited to deciding how much to award the plaintiff in damages. After the jurors rendered their verdicts we calculated the average damage award for each demographic for each case. We then took an "average of the averages" to create the propensity chart where the length of the bar shows how much more (or less) each group's damage awards are compared to the average juror (a full description of the methodology can be found at www.trialsurveys.com). For example, we found that Democrats have a positive

propensity of 33%. This means that for a case with an average value of of \$100,000, Democrats can be expected to award one-third more than average (\$133,000). Note that for this would be roughly \$50,000 more than Republicans award given their negative 15% propensity.

CASE SPECIFIC FINDINGS

While the overall propensity chart provides a good summary of jury behavior, each group's propensity can vary by type of case. Take gender for example. At first glance one might conclude that the gender makeup of the jury would *not* have a significant impact on damages because each gender varies from the average by only 3%. This would be an erroneous conclusion.

Male and female jurors actually had some of the largest differences on a case-by-case basis. In the two cases where the plaintiff suffered a broken bone that limited activity, female jurors awarded significantly less than men. However, in an emotional damages case involving a claustrophobic plaintiff who was stuck in an elevator for an extended period of time females awarded nearly twice as much as their male counterparts.

Political affiliation also resulted in complex behaviors. Although Democrats awarded more money than Republicans in all but one case, the pro-plaintiff orientation of Democrats was particularly pronounced in the two emotional damage cases where Democrats awarded *more than twice* as much as Republicans.

Other demographic groups demonstrated more consistent behaviors across the various types of cases. When it comes to race we found that African American jurors awarded more money than White jurors in all six cases. The propensity of each age group was also relatively stable across the different case types. Younger jurors (those under 35) awarded significantly less damages than the average on five of the six cases.

But, even among the relatively stable age demographic we saw important trends. Although young jurors consistently award less than average, this group is particularly stingy when the damages are emotional rather than physical. And while the oldest jurors (55+) awarded more than average in five cases, in the emotional damages case involving a Peeping Tom's hidden video camera, older jurors were quite conservative and awarded nearly a third less than average.

Taken together this research clearly shows two things. First, there are very real and predictable differences in the damages awarded by each demographic group. Second, although it is possible to quantify the general propensity of each demographic group, the propensities for some groups vary significantly based on the cause of action and/or individual facts.

ETHICAL CONSIDERATIONS

On one hand the findings confirm and quantify many long held beliefs about the propensities of various demographic groups to side with one party or the other. On the other hand this research also raises ethical considerations for trial attorneys who should avoid making preemptory challenges based on immutable demographic characteristics such as race or gender.

These ethical considerations do not, however, suggest that attorneys should not make practical use of this information. By understanding the general propensities of each group (or researching the propensities for a specific case), attorneys have the opportunity to reevaluate their case based on the demographics of the sitting jury.

It is also important to remember that most of the demographic propensities identified through this research are not actually driven by demographics. Instead, these propensities are the result of cultural and environmental factors that tend to influence individual demographic groups. Consider that a juror of a particular race or ethnic background was not magically born to be plaintiff or defense orientated by virtue of their race, but instead evolved their propensity over time based on the all the factors that influence that group.

About Trial Survey Group

TSG specializes in conducting large scale mock trials over the Internet using the latest tools in opinion research. Attorneys use the results to predict trial outcomes, determine the impact of individual pieces of evidence, and jury selection. More information about TSG can be found at www.trialsurveys.com.

About the Author

Chris Denove is both a trial attorney leading expert in opinion research. Prior to founding TSG, Chris spent a dozen years at J.D. Power and Associates where as Vice President he designed opinion feedback systems for some of the world's largest companies.