



## Insights from Trial Analysts:

# Jury Psychology in “The New Normal”

The Great Recession of 2008 and 2009 destroyed the economic stability of millions of American families and left millions more wondering about their financial future. Unemployment rates rose to more than 10 percent nationally and more than 16 percent among African Americans. More than one in six workers are underemployed (defined as unemployed workers who are actively looking for work, unemployed workers who are not actively looking for work, and part-time workers who want full-time work). Unemployment among teenagers is at 27 percent and 50 percent among African American teenagers. Meanwhile, the number of home mortgage delinquencies and foreclosures rose precipitously. As real estate prices fell, more people found themselves owing more on their home mortgage than their house is worth. Nationally, 25 percent of home mortgages were “upside down” by mid-2009. That number rose to more than 40 percent in Michigan, and 55 percent in Nevada.

During 2009, there was no end to the dismal economic news and it has had a profound effect on the psyche of Americans. While the financial markets appear to have stabilized, concerns about unemployment and personal finances persist. Most economists forecast that unemployment will remain above 8 percent for the next several years and it might be a decade before employment rates return to their pre-recession levels.

Those who remain employed have been affected by family members who have lost work or experienced a reduction in income. Since the recession began, 44 percent of families have experienced a job loss, cut in pay, or reduction in hours. Twenty percent of young adults (26 and younger) are living with their parents.

For many years, American families rode a wave of economic optimism. Increasing home prices

and access to cheap credit masked the reality of stagnant wages and declining economic security. Median household income, adjusted for inflation, was lower in 2008 than it was in 1997. Yet it wasn't until the collapse of the real estate market in 2008 that most Americans understood the precarious nature of their personal financial security.

Economists point to dramatic increases in the level of personal saving as a strong indicator of economic uncertainty. On the eve of the 2008 recession, the personal savings rate in America was negative. That is, the typical American family spent more than it earned. A year later, personal savings jumped to 4.5 percent as people cut consumption and worked to reduce their debt. A recent Gallup Poll revealed that 46 percent of Americans believe that economic recovery will not begin for at least three more years, a finding that was persistent across income levels and political affiliations.

In recent months numerous articles have reported on the ongoing research by economists and sociologists who study the social and emotional impact of recessions and economic uncertainty. The present recession has affected classes of workers disproportionately. In a recent *Atlantic* article, Don Peck notes that men have suffered “three-quarters of the 8 million job losses since the beginning of 2008. Male-dominated industries (construction, finance, manufacturing) have been particularly hard-hit, while sectors that disproportionately employ women (education, health care) have held up relatively well. In November 2008, 19.4 percent of all men in their prime working years, 25-54, did not have jobs.” Moreover, large corporations appear to be weathering the economic downturn much better than small companies and individuals. Writing for *Newsweek*, Rana Foroohar argued that there is a “growing divide between the fortunes of big American firms and the average American worker.”

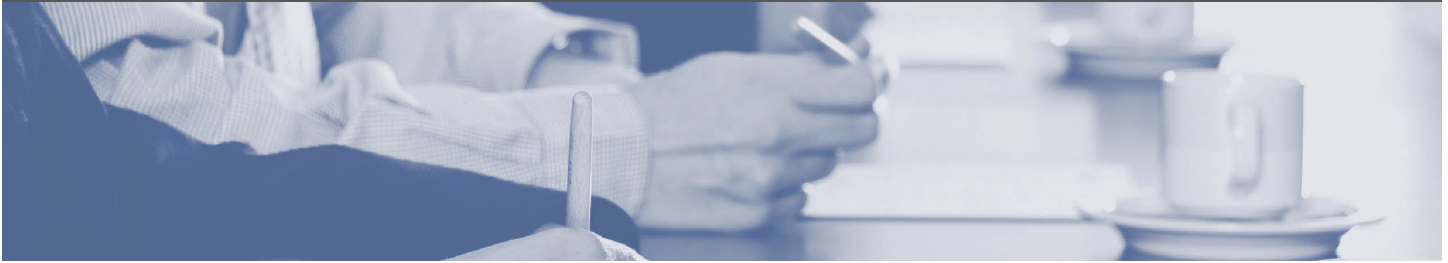
If the Great Recession is having a profound impact on the psyche of American workers and families, what effect is it having on jurors who sit in judgment of your client? How will the “new normal” change the way that jurors perceive and react to witness testimony? To what extent will anxiety about personal finances influence juror reactions to damages arguments? This paper addresses these questions by identifying two psychological factors – Cynicism and Locus of Control – that affect juror perceptions of case presentations and examining how these factors have changed as a result of the new economic reality.

## Cynicism

Cynicism can generally be defined as intense skepticism about the integrity and motives of others. While it is natural to be skeptical of the veracity and professed motives of some people in some situations, cynicism is a relatively stable predisposition that serves as a perceptual filter for the testimony and arguments that jurors hear at trial.

***“...unlike the cynicism created by corporate and political scandals, the cynicism fostered by the Great Recession has become much more personal.”***

Jurors in the “new normal” are likely to be much more cynical and jaded in their evaluation of evidence and testimony at trial. Periods of extreme cynicism have always followed specific incidents of economic and political corruption. The unprecedented number of corporate fraud scandals during the past decade – Enron, Global Crossing, HealthSouth, Tyco, WorldCom – left jurors more jaded in their evaluation of corporate motives. So how has the Great Recession changed this situation?



Cynicism fostered by corporate scandals and political corruption has always been greater in local communities where the scandal occurred. For example, jurors in Houston were more cynical about big business following the collapse of Enron and Arthur Andersen than jurors in venues that were not affected by the demise of those companies.

However, the cynicism engendered by the economic meltdown and Wall Street bailout is much more pervasive. Instead of viewing corporate scandals as events that largely affect others, jurors have come to believe that the reckless conduct of investment bankers and mortgage lenders has directly influenced their personal lives and financial security. In this regard, unlike the cynicism created by corporate and political scandals, the cynicism fostered by the Great Recession has become much more personal.

Cynicism manifests itself in distrust and disillusionment with organizations and authority figures. Cynical jurors are more likely to discredit testimony from expert witnesses, challenge the integrity of fact witnesses, and speculate about the underlying motives of corporations and government organizations.

Cynical jurors are prone to discredit testimony from experts and substitute their own knowledge and beliefs to form judgments about an issue. Believing that their own perspective is more reliable and likely to produce the “correct” verdict, cynical jurors are also less receptive to arguments and evidence presented by other jurors during deliberations.

### Detecting Cynicism

Given the pernicious effect that cynicism can have on a juror's understanding of case issues and acceptance of testimony, uncovering the cynical juror has become an important part of *voir dire* and jury selection. Measures of juror cynicism, like the one developed by George Hunter, can be used in juror questionnaires to tap into beliefs about the integrity of witnesses as well as the competence and motives of government agencies and large corporations.

For example, strong agreement with the following statements reflects a cynical view of the world:

- Most people will lie in court if they stand to profit from it.
- People pretend to care about each other more than they do.
- An expert witness will say anything as long as he or she is paid for it.
- Many expert witnesses do not tell the truth, even though they are under oath.
- Expert witnesses almost always have information they are hiding.
- In general, corporations value profit over product safety.
- Big businesses often engage in deceptive behavior to increase profits.
- The federal government cannot do anything right.
- Most politicians cannot be trusted to speak the truth.

***“...cynical jurors are also likely to resist testimony and arguments that do not conform with their personal beliefs and world view.”***

*Voir dire* provides an excellent opportunity to talk with prospective jurors who provided cynical responses to items on a juror questionnaire. Follow-up questions can be used to understand the underlying reasons for cynical attitudes and provide prospective jurors with an opportunity to describe their personal feelings about witnesses and parties in the case. Cynicism will generally show itself if jurors are encouraged to talk about the reasons for their views on particular issues.

### Appealing to Cynical Jurors

People who are more cynical are also likely to be more dogmatic. Dogmatic people tend to be closed-minded and certain of their opinions.

Consequently, cynical jurors are also likely to resist testimony and arguments that do not conform with their personal beliefs and world view. Given this state of affairs, it is important to develop testimony and arguments that will appeal to cynical members of the jury. Several strategies can be effective in this effort:

- Honesty and openness are essential. Cynical jurors are in a state of heightened alertness for evidence that confirms their view of others as untrustworthy. Cynical jurors will be looking for evidence that fact witness testimony is guarded or expert testimony is biased so they can label it as “typical” of people who cannot be trusted.
- Tap into existing belief structures. Cynical jurors will be more comfortable with their own conclusions than with the conclusions provided to them by others. Encourage jurors to judge evidence and testimony for themselves and provide specific criteria for evaluating the reasonableness and veracity of witness testimony.
- Do not tell jurors how they should feel. While it is desirable to present explicit conclusions for arguments about objective issues, like the technical interpretation of scientific data, it is important to allow jurors to draw their own conclusions about subjective issues that are more personal in nature, like the integrity of a witness or the value of a personal loss. Guidelines for evaluating subjective issues are helpful for jurors, but cynical jurors react negatively to suggestions about how they should feel.
- Emphasize the objectivity of expert witnesses. Cynical jurors will be predisposed to conclude that expert witnesses have a reporting bias and will only reveal what is in the best interests of the client that hired them. Establishing the objectivity of expert witnesses is essential for gaining the trust of cynical jurors. For example, testimony that is not fully supportive of a client's position may be viewed as more credible, because it is less biased, than testimony that is 100 percent aligned with a client's position in the case.



- Acknowledge jurors’ cynicism. Without focusing on specific jurors, acknowledge in opening statements that people are often cynical about the motives of individuals, corporations, and government agencies. Ask jurors to set their cynicism aside and use their intellectual curiosity to carefully evaluate the testimony and documents before forming a judgment about who should win the case.

**“Cynical jurors will be predisposed to conclude that expert witnesses have a reporting bias and will only reveal what is in the best interests of the client that hired them.”**

## Locus of Control

Locus of Control refers to people’s beliefs about the causes of positive and negative events in their lives. Jurors who believe that they control and are largely responsible for events that occur in their lives are described as having an *internal locus control*. Conversely, jurors who believe that other people, fate, or luck are the cause of important life events are described as having an *external locus of control*.

There is a natural tendency for people to take credit for favorable outcomes in their lives and to look for external causes of negative events. However, jurors with an internal locus of control have a greater tendency to assume responsibility for favorable and unfavorable events, while those with an external locus of control will have a tendency to attribute events to other people or factors beyond their control.

Julian Rotter introduced the Locus of Control concept as a relatively stable personality characteristic, rather than a transient self-perception. However, our research has found that a juror’s locus of control can be affected by events in their lives. For example, jurors who work in seasonal jobs or occupations (i.e., construction, camp counselors) and those whose work is tied directly to economic trends (i.e., mortgage processors, auto sales people), are

likely to report a more external locus of control than people who work in occupations where they exert control over the events around them (i.e., financial planning, engineering).

Jurors who possess an internal locus of control will accept responsibility for problems in their lives and they expect others to do the same. In mock trials, we routinely see jurors with an internal locus of control advocate a “personal responsibility” theme and argue that plaintiffs should assume responsibility for negative outcomes. In contrast, jurors with an external locus of control are predisposed to find someone or something to blame for negative outcomes in their own lives. Jurors with an external locus of control are primed to accept the argument that someone other than the plaintiff is responsible for causing the negative events that precipitated the lawsuit.

So how has the Great Recession changed this situation? A prolonged period of unemployment and underemployment has led many Americans to re-evaluate their perceptions of control. People who have worked hard and played by the rules are suddenly without jobs and facing the prospect of long-term unemployment. The average duration of unemployment now exceeds 30 weeks, the longest duration since the Great Depression.

**“...jurors who traditionally advocated a “personal responsibility” theme may be more inclined to find someone else to blame...”**

In addition to worrying about their own employment prospects, parents are now watching their adult children struggle to begin productive careers. In January of this year, for every job opening there were six people looking for work. Given these harsh economic circumstances that are beyond the control of the typical American family, it is only natural that people begin to make more external attributions for the cause of their personal situations. Particularly among men, where employment is closely tied to identity and perceptions of self-

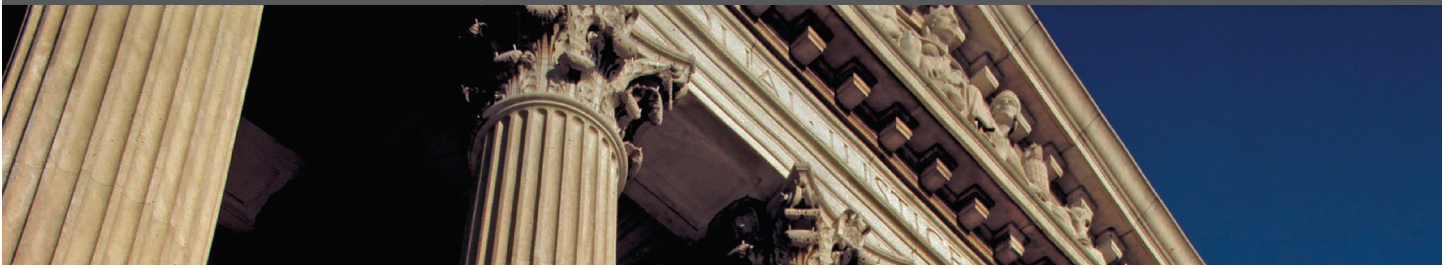
worth, adopting an external locus of control is one way of coping with the loss of control. Confidence has eroded and people are more likely to begin looking to external factors to explain their predicament and manage their anxiety. Consequently, jurors who traditionally assumed full responsibility for events in their own lives are now more susceptible to arguments that someone else is to blame. In short, jurors who traditionally advocated a “personal responsibility” theme may be more inclined to find someone else to blame for a plaintiff’s predicament.

## Assessing Locus of Control

Given that it is a personality construct, jurors may not be cognizant of their locus of control. *Voir dire* can be used to elicit information about the extent to which jurors perceive that they are in control of events in their lives, but a juror questionnaire can provide more detailed information to supplement *voir dire* responses and facilitate the jury selection process.

Since Julian Rotter developed the first scale to measure Locus of Control in 1966, there have been numerous specialty measures that apply to specific situations, such as locus of control with regard to personal health. For a more general assessment, we have found that strong agreement (or disagreement) with selected items from the Rotter’s measure are useful indicators in a variety of legal contexts.

- Many of the unhappy things in people’s lives are partly due to bad luck.
- People’s misfortunes result from the mistakes they make.
- I have often found that what is going to happen will happen.
- Becoming a success is a matter of hard work, luck has little or nothing to do with it.
- Getting a good job depends mainly on being in the right place at the right time.
- When I make plans, I am almost certain that I can make them work.
- It is not always wise to plan too far ahead



because many things turn out to be a matter of good or bad fortune anyhow.

- Many times I feel that I have little influence over the things that happen to me.

### Adapting to Jurors’ Locus of Control

It is important to understand the impact of external locus of control on jurors’ perceptions of case issues, but it is equally important not to overlook the fact that some jurors will be guided by an internal locus of control. Indeed, jurors whose families have been relatively unaffected by the recent economic turmoil may continue to possess strong beliefs that they are personally responsible for outcomes in their lives, including their economic stability. Consequently, it is important to develop arguments and strategies that will appeal to jurors who possess a strong external locus of control and those with an internal locus of control.

**“It is not sufficient to demonstrate that an opposing party could have acted differently; jurors with an external locus of control will need evidence that the party could have actually changed the outcome...”**

- Recognize that the impact of external locus of control is strongest when jurors identify with the aggrieved party. For example, jurors with an external locus of control who closely identify with the plaintiffs in a toxic tort case will be more inclined to conclude that the defendant is responsible for the plaintiffs’ medical conditions. However, if those same jurors disassociate themselves from the plaintiffs’ circumstances, then an external locus of control will be less influential in jurors’ perceptions of the case information. Thus, while it is not possible to alter a juror’s locus of control, it is possible to change factors that affect the persuasive impact of locus of control.

- Understand the importance of personal responsibility. Jurors with an internal locus of control will emphasize personal responsibility and hold parties accountable for their own conduct. Thus, if your client will benefit from a personal responsibility theme, it will be important to develop the theme and encourage jurors to advocate personal responsibility during deliberations.
- Emphasize perceived efficacy. It is not sufficient to demonstrate that an opposing party could have acted differently; jurors with an external locus of control will need evidence that the party could have actually changed the outcome had they assumed more responsibility. If jurors perceive that a party lacked the ability to change the outcome, then arguments about the party’s lack of effort will not offset the desire to look for someone else to blame for an adverse outcome.

### Summary

The Great Recession has had a profound effect on the economic prospects of millions of American families. Unemployment, underemployment, and diminished career prospects have affected nearly half of the families in the country. The length and depth of this recession will have a strong effect on jurors’ beliefs about corporations and government. It will also affect jurors’ perceptions of the control they have over essential aspects of their lives. For the next several years, jurors are likely to be more cynical and more likely to consider external causes as they search for explanations for problems in their lives.

These changes will influence the way that jurors perceive witnesses, attorneys, and evidence at trial. Because the economic effects of this recession have had a disproportionate impact on men – there are now more women employed than men – traditional stereotypes about favorable and unfavorable jurors may no longer apply. Indeed, we have observed that women who are employed in productive

careers tend to be more vocal and persuasive in mock jury deliberations than men who have recently experienced a job loss or early retirement. Understanding how jurors’ perceptions of themselves and others have changed as they adapt to the “new normal” is an important consideration in developing persuasive case presentations that will embolden jurors to become effective advocates during deliberations.

### References

Foorhar, R. (2010). The Recession Generation. *Newsweek*, January 18, 42-45.

Hunter, G. (2004). Cynical Attitudes. In Wrightsman, L.S., Batson, A.L., and Edkins, V.A. *Measures of Legal Attitudes*, Belmont, CA. Thompson Wadsworth (pp. 52-54).

Peck, D. (2010). How a new jobless era will transform America. *The Atlantic*, March, pp. 42-56.

Rotter, J. (1966). Generalized expectancies for internal versus external control of reinforcements, *Psychological Monographs*, 80, Whole No. 609.

Rotter, J. (1990). Internal versus external control of reinforcement: A case history of a variable. *American Psychologist*, 45, 489-493.

Saad, L. (2010). Americans see economic recovery a long way off. *USA Today/Gallup*, January 20.

**James B. Stiff, Ph.D.**  
 President, Trial Analysts  
 979-696-6709  
[jstiff@trialanalysts.com](mailto:jstiff@trialanalysts.com)  
[www.trialanalysts.com](http://www.trialanalysts.com)