Marketing Research and Corporate Litigation … Where Is the Balance of Ethical Justice?

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ABSTRACT. Tampering with the judicial system has long been regarded as an unethical and illegal standard of corporate behavior. Advances in behavioral research have recently, however, skirted the 'letter of the law' by applying consumer research techniques to the sampling universe from which prospective jurors are selected. This practice has resulted in an unfair and measurable advantage which offsets any balance of ethics and justice.

This article adopts a protagonistic perspective to demonstrate research illustrating jury evaluation techniques. Because the legal system, which is based on jurisprudence, does not have the ability or resources to monitor or regulate these practices, the question must be addressed within the domain of business ethics. … Where does the balance of ethical justice lie? Is the sole objective to win and protect the bottom line of the corporate income statement, or does a code of business ethics apply?

Consumer initiated litigation has been widely discussed in the context of corporate marketing decisions. It is a popular misperception that consumer activity within the legal system is limited to the role of plaintiff against corporate practices and products. The consumer however, also functions as the juror representing all consumers in evaluating the social and legal acceptability of marketing related activities. The consumer juror not only evaluates the position of the parties involved, but also evaluates the purchase decision and product-use facts for the trial situation.

Consumer behavior research as it pertains to law is currently construed to be synonymous with buyer behavior. The involvement of consumer researchers within the legal system has traditionally been limited to serving as an expert witness or testifying in regard to research models that establish the critical relationships of the trial (Jacobson, 1979; Sen, 1979). However, an expanded role is emerging.

Consumer researchers are now involved in providing technical assistance and research expertise in formulating compositional motions, making jury selection decisions, and formulating legal strategies.

The purpose of this article is twofold: first, to increase awareness of the consumer’s role as a decision maker within the legal interface. Many corporations now recognize the necessity of accurately understanding consumers who serve as jurors. Evaluation techniques have been applied to consumer juror decision making [(a) the perspective juror, (b) the selected juror] which have resulted in specific legal strategies and tactics. The second purpose of this article is to demonstrate this evaluation of consumer decision making as an extension of the consumer research activities.

Relevant literature

An extensive review of the consumer behavior and marketing literature reveals no empirical or theoretical studies of the consumer as a decision

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maker within the judicial process. Rarely has consumer decision making been the point of convergence (Cohen, 1974; 1982; Brandt and Peterson, 1977; Kuehl and Dyer, 1978). Direct consumer involvement in the judicial process has been limited to cases where personal damages resulted from the actions of a firm (Reiter vs Sonotone Corp. et al.). Consumer researchers and psychologists are, however, becoming involved as a natural extension of both theory and application. This extension, however natural, has sparked considerable debate within the legal and social science professions (Berk et al., 1977; Etzioni, 1974; Yale Law Journal, 1977). Whatever the desirability of introducing consumer research into the profiling of consumer juries, research of this type is increasing.

Research on juror behavior has addressed a wide variety of issues, including the demographic and personality characteristics of the juror. Each of these areas is treated below.

**Demographic characteristics**

The influence of demographic characteristics on juror decision making is generally consistent across cases, though exceptions do occur. Jury simulations have determined that significant differences in verdict tendency exist between males and females. Females were more likely to deliver a guilty verdict. This is especially true where sexually related crimes were considered (Davis et al., 1975; Efran, 1974; Sealy and Cornish, 1973.)

The place of residence has been shown to affect juror decisions. Rural and small town jurors tend to be significantly harsher in delivering fines and sentences than other jurors (Rose and Prell, 1955; Grisham and Lawless, 1973). Other demographic characteristics that have been found to be related to severity of verdict decisions include higher economic status and higher education levels (Reed, 1965). Political affiliation also influences juror decisions, with Republicans being less favorable than Democrats toward making large monetary settlements in personal injury cases (Hermann, 1970).

In summary, differences in sex, place of residence, economic status, education level, and political affiliation all impact the severity of the verdict delivered. Although these findings are generally supported across a number of different types of cases, some inconsistencies exist. These inconsistencies depend on the type of crime, seriousness of the charge, type of evidence, and dependent variables employed.

**Personality characteristics**

Investigation of the influence of personality characteristics on jury decision making has been dominated by two lines of research. The first deals with the authoritarian personality and the second with the locus of control. Authoritarians have been shown to exhibit behavior that is highly punitive, racist, politically conservative, rigid, and acquiescent to authority figures (Brown, 1965). Authoritarian jurors have been found to render more severe verdicts, while their less authoritarian counterparts rendered less severe verdicts (Boehm, 1968). When the similarity/dissimilarity of the juror and the defendant were considered as covariates of authoritarianism, behavior was altered (Mitchell and Byrne, 1973). Authoritarian jurors, as compared to non-authoritarian jurors, rendered more severe decisions as dissimilarity with the defendant increased. When faced with a defendant similar to himself, however, the authoritarian juror was less confident of guilt than the non-authoritarian juror (Rotter, 1966).

Internal/external locus of control research investigates the relationships between behavior and the degree of the individual’s belief in self-determination. Research findings indicate that the internally controlled juror attributes more responsibility for the crime to the defendant than does the externally controlled juror (Phares and Wilson, 1972). In addition, the internally controlled juror was found to render a more severe verdict than the external juror (Sosis, 1974).

In summary, a growing body of literature indicates that juror characteristics may be used to explain juror decisions. Furthermore, the selection of juries which are congruent with identified profiles can produce significantly different