

The Psychology of Today's Juries: What Makes Them Tick? Are They Really Your Peers?

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The Problem

If it's going to be on the market, it needs to be **100% safe.**

If it has the **ability to hurt** someone, it's **defective.**

I don't care about the data; if it happens once, it has happened **one too many times.**

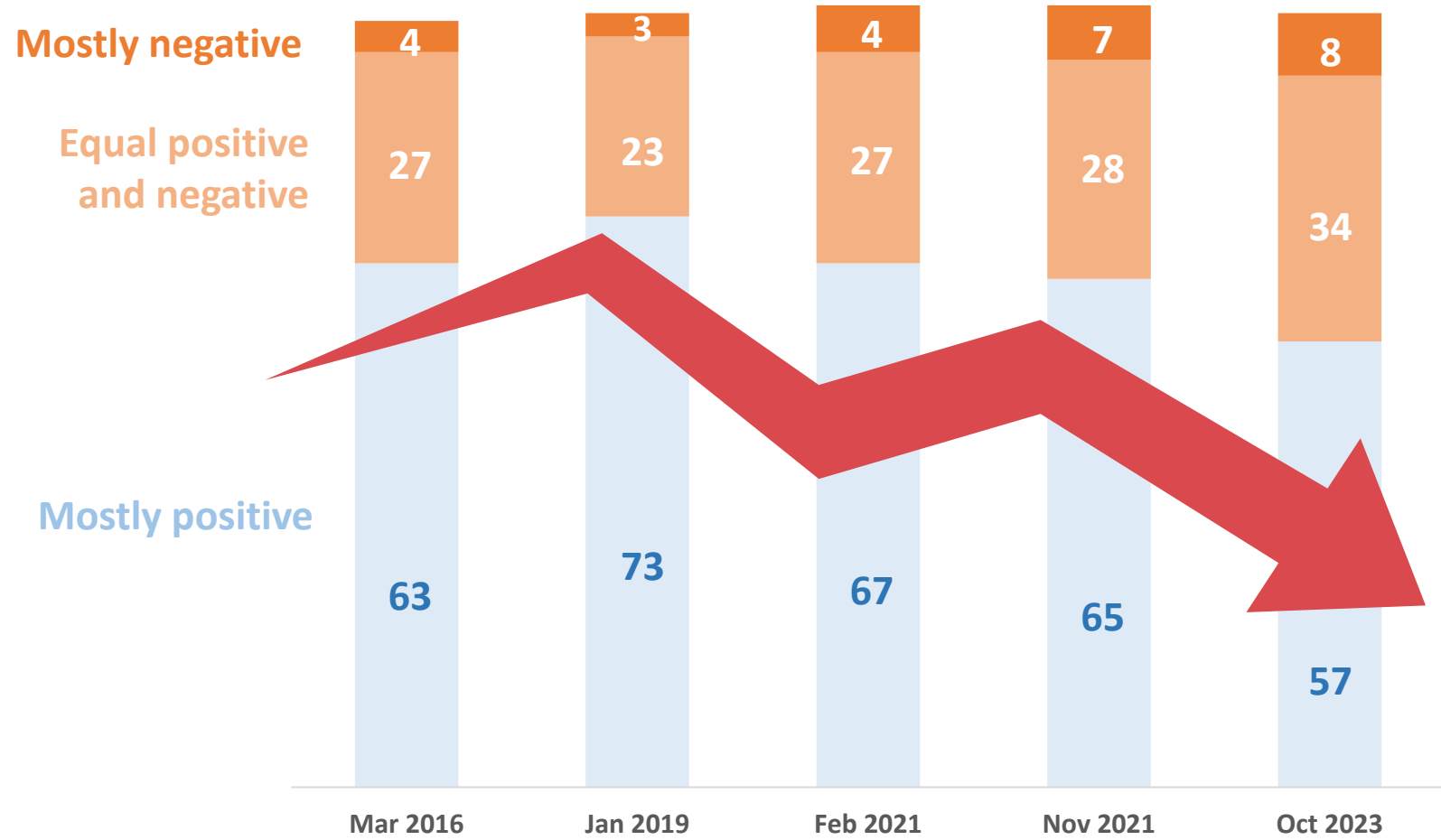
- Nuclear verdicts
- Stronger anti-corporate attitudes
- Distrust of government re: safety
- Reversing the burden of proof
- Possibilities over probabilities

The Problem

- This Isn't REPTILE
- Damages as Justice and Power Over Corporations
- (Younger) Millennial & Gen Z Jurors
- Increased External Locus of Control
- Increased Expectations of Safety Standards
- Decreased Trust in (Real) Science
- Increased Tribalism



Drop in Confidence in Science



Three Thought Fallacies

Fragility: total avoidance of harm, discomfort

“What doesn’t kill you, makes you weaker.”

Emotional thinking as legitimate, before reason or science

“Always trust your feelings.”

Tribalism: no discourse, no compromise

“Life is a battle between good and evil people.”



Source: *The Coddling of the American Mind* by Greg Lukianoff & Jonathan Haidt

The Fallacy of Emotional Reasoning

Emotional reasoning

Feeling guide interpretation of reality

Catastrophizing

Focus on worst possibility and make it most likely

Overgeneralizing

Base global negatives on single incident

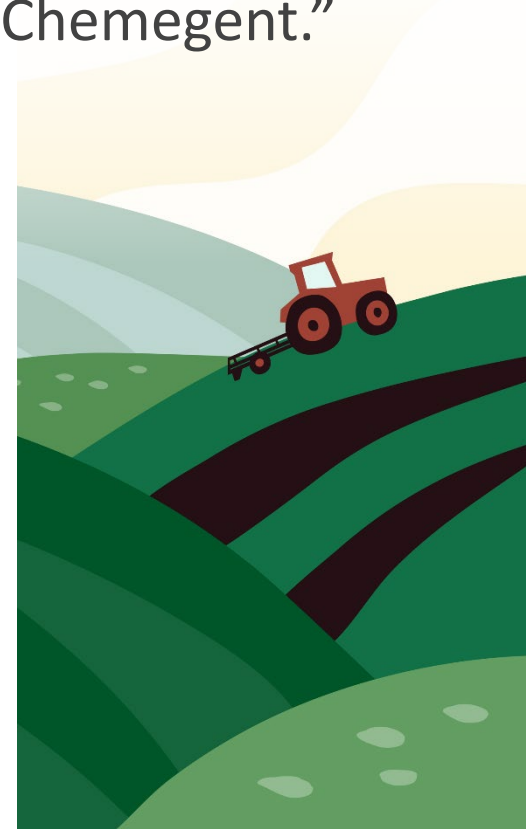
- All or nothing thinking
- Labeling, categorizing everyone/everything
- Focus on negatives
- Outward blame (external locus of control)



Scenarios: Herbicide Scenario

The fictional scenario described the following case issues and claims about an herbicide product, “Canophyde,” produced by chemical manufacturer “Chemegent.”

- Canophyde is **approved by the EPA (but banned in the EU)** for use by approved applicators on commercial farms.
- The **plaintiff has lived** near commercial farms, **where Canophyde had been applied**, for the past **35 years**.
- The **plaintiff claims that scientific evidence shows Canophyde is carcinogenic**, and that he now **has cancer as a result of exposure** to the chemical through drifting spray.
- Chemegent denies that Canophyde caused the plaintiff’s cancer, arguing that years of **studies prove it is not a carcinogen** and that the product was properly labeled.
- Chemegent further argues that **other herbicidal agents** produced by other manufacturers have been found to cause cancer and that **other nearby farms could have used those agents**.

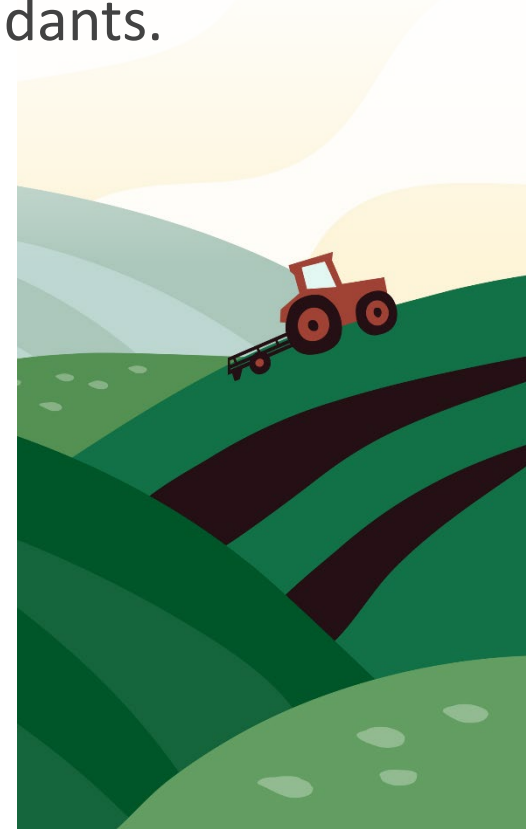


Analyses

Participants responded with a verdict, as well as an indication of how strongly they desired to award damages and how angry they felt toward defendants.

These responses were submitted to linear regression analyses:

- Measuring safetyism
- Intuitive thinking
- Risk aversion
- Attitudes toward government agencies
- Political leanings
- Several demographics as potential predictors



Herbicide Results

Pro-Plaintiff
46%

Neutral
10%

Pro-Defense
44%

- Higher safety-ism, greater reliance on intuition, greater risk aversion, and younger age significantly predicted a pro-plaintiff verdict.
- Pro-defense jurors, in contrast, were low on safety-ism, utilized greater fact-based thinking, accepted more risk, and were older than their pro-plaintiff counterparts.



Herbicide Results: Damages

Compensatory Damages

Extreme desire for Chemegent to compensate the plaintiff

20%

Moderate desire for Chemegent to compensate the plaintiff

38%

- Higher safety-ism, greater reliance on intuition, greater risk aversion, and younger age predicted greater desire to award the plaintiff damages.

Anger Toward the Defendant

- Younger age and greater reliance on intuition were the strongest predictors of anger toward the defendant.
 - *but*, low safety-ism respondents with high intuitive thinking experienced anger toward Chemegent that was no different than high safety-ism respondents.

Herbicide Additional Findings

Desire to Punish

- Pro-plaintiff jurors, 71% desired to award punitive damages.
 - Only greater risk aversion and younger age significantly predicted a stronger desire to punish Chemegent.

Additional Findings

Additional significant findings offer insight into potential jurors' decision-making:

- Less trust in government agencies.
- Believed jury damage awards for diseases such as cancer deserve more money than other types of cases.
- Safety-ism significantly correlated to many political opinions:
 - More positive views of Democratic Senators, President Biden, and Vice President Harris correlated to greater safety-ism.



The Solution: Voir Dire Strategies

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- Reversing the Reptile
 - What if you are “wrongly accused”?
- What if this was you?
 - A way around the Golden Rule by placing them in the shoes of a defendant
- What does Justice look like?



Voir Dire Issues: Risk Aversion and Safety Attitudes

Companies should prioritize safety, regardless of cost, ensuring product safety at all costs.

Products and pharmaceuticals should warn about every possible side effect, no matter how small.

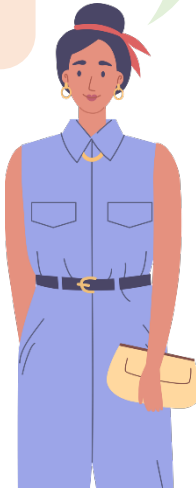
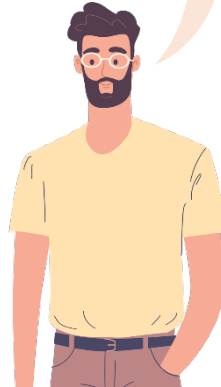
A manufacturer has the responsibility to research and prevent every possible misuse of its product.

Companies must ensure their products are always 100% safe, 100% of the time

I avoided using a product due to health and safety concerns.

Manufacturers aren't responsible if someone misuses a product and gets harmed.

If a product could potentially raise cancer risk, I'd stop using it.



Translated to Voir Dire: Risk Aversion and Safetyism

Who here has decided not to use a product because you were **concerned** about its health and safety risks?

Who **feels** like products, especially safety products, should warn about every possible risk, no matter how small?

Who **feels** like companies should take every possible measure, no matter the cost, to ensure their products are always 100% safe?

Who here **feels** like if someone misuses a product, the manufacturer is still at fault because they should have thought of and prevented that type of misuse to keep people safer?

Note: frame as many questions using “**FEELS**” instead of “believes”... This is about finding the **jurors who think feelings are facts.**



Voir Dire Issues: Distrust of Government Agencies

I trust government regulatory agencies (e.g., EPA, FDA) to keep us safe.

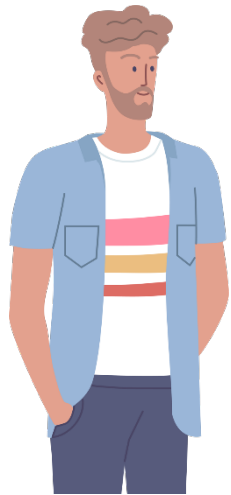
The government can't be trusted to keep people safe.

Large corporations have connections within the FDA and EPA so they can manipulate these agencies to do what they want.

The EPA is too business-friendly.

Government agencies, like the EPA and FDA, do not research products and medicines thoroughly enough to ensure anything that is approved is adequately safe.

Corporations have too much influence on government agencies.



Translated to Voir Dire: Risk Aversion and Safetyism

Is there anyone here who *feels* they may have some distrust for government regulatory agencies (e.g., EPA, FDA) to keep us safe?

Who here *feels* like the government generally cannot be trusted to keep people safe?

Does anyone *feel* like these days large corporations have too much influence on government agencies?

Who here *feels* like government agencies that are meant to keep people safe do not research products thoroughly enough to ensure anything that is approved is adequately safe?



The Solution: Corporate Character

- Good Corporate Character is more Than a Slogan
- Corporate Character in Court
- People Make the Company



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