

# JUROR BIAS AFTER 9/11

Benjamin F. Barrett

Amanda A. Farahany

Barrett & Farahany, LLP

Atlanta, GA

# JUROR BIAS AFTER 9/11

- Juror Bias Defined
- General Types of Juror Bias
- Media Coverage after 9/11
- “Bush-isms”
- General Changes in Juror Bias after 9/11
- Overcoming Each Bias

# WHAT IS JUROR BIAS?

Emotional and Personal Values

Stereotypes/ Myths

Prior Experiences and Beliefs

“Experiences”

Manipulated by TV, Mass Media

Difficult to Abandon Any Previous Biases

# GENERAL TYPES OF JUROR BIAS

- Accountability & Responsibility
- Defensive Attribution
- Availability Bias
- Norm Bias
- Suspicion of Plaintiff

# ACCOUNTABILITY & RESPONSIBILITY

- Belief that Individuals Should be Responsible For Themselves
- Belief that Individuals Should be Personally Accountable for Their Lives
- Look to See if the Victim is a Responsible Person
- Look to See if the Victim is Responsible for the Crime Occurring to Them

# DEFENSIVE ATTRIBUTION

- Jurors will Try and Deflect
- Own Sense of Invulnerability
- Personally Threatened
- “Couldn’t Happen to Me”
- “If it was me, I wouldn’t have ...”

# AVAILABILITY BIAS

- Jurors Attribute Cause To Facts Known to Them
- Must Relay Facts from Defendant's Misconduct, not Victim's View
- Show Defendant's Actions, not the Victims
- Tell the Victim's Damages

# NORM BIAS

- Jurors Try to Attribute Cause to Events that Are Abnormal
- Jurors hold Victim to Higher Standard Than Themselves
- Focus Groups for Standards
- Portray the Victim's Actions as Normal
- and Defendant's Actions as Abnormal



# SUSPICION OF PLAINTIFF

- Tendency to Not Trust Plaintiff  
or Plaintiff's Attorney

Jurors Believe the Plaintiff's Attorney  
Will Lie to Them

# CHALLENGES IN CRIME VICTIM LITIGATION

- Holding Business or Property Owner Responsible for Acts of Criminal
- Can You Really Do Anything to Stop Criminals?
- Plaintiff Can Protect Self From Crime

# JUROR BIAS IN SEXUAL ASSAULT CASES

- Consent / Blame The Victim
- Reporting
- Lack Of Witnesses
- Prior Relationship
- Lying/ False Memory
- Not Injured

# JUROR BIAS IN SEXUAL ASSAULT CASES

- Rape is the only felony that places the onus on the survivor. If an assailant held you at knifepoint, asked for your wallet and you complied, there is no question that a crime was committed. You would not be asked if you had consented. You would not be asked if you had tried to resist.

# MEDIA COVERAGE AFTER SEPTEMBER 11

- Focus on Security
- Criminal Attacks Can Happen to Smart People
- When Security is Inadequate, Innocent People Can Be Harmed
- Highlight on Criminal Attacks Being Stopped
- Third Party Liability
- Victims of Crime Can Be Blameless

# BUSH'S WORDS FOR RESPONSIBILITY

- Use them in your trial and in your depositions
  - Reform
  - Refocus
  - Responsibility
  - Lead
  - Step Up
  - Do Everything We Can
  - Spare No Effort
  - Perform
  - Do His Job

# BUSH ON THIRD PARTY LIABILITY

- “It’s not just one person, we’re talking about those who fed them, those who house them, those who harbor terrorists will be held accountable for this action.”
- “We’ll deal not only with those that dare attack America, we’ll deal with those that harbor and feed and house them.”

# BUSH ON THIRD PARTY LIABILITY

- “The President said that a war has been waged against us, and this is a war with those who engage in these terrorist attacks and those who harbor them.”



# DO EVERYTHING

- “We intend to honor our constitution and respect the freedoms that we hold so dear. And secondly, we want to make sure that we do everything that we can to prevent a further attack.”
- “Our reactions must spare no effort in preventing all forms of proliferation, and we discussed Iran in this context today.”

# DO EVERYTHING

- “Bearing words of warning across a continent, President Bush told wary European leaders “We’ve got to use all means at our disposal to deal with Saddam Hussein.”

# REFORM

- “Bush’s comments amounted to a show of support for FBI Director Robert Mueller, who unveiled plans on Wednesday to refocus the FBI’s efforts to fight terrorism”
- “The FBI needed to change. It was an organization full of fine people, who loved America, but the organization didn’t meet the times. So I appreciate Director Mueller’s reform measures.”

# STEP UP

- “I’ve called on all parties to step up their responsibilities.”
- “All of us must step up our efforts”
- “The Crown Prince clearly understood there is a responsibility for the Arab World. He also believes strongly that Chairman Arafat must step up.”

# NEED TO PREVENT CRIME

- “We must never cut corners when it comes to our national security.”
- “Against such enemies, we cannot sit quietly and hope for the best. To ignore this mounting danger is to invite it.”

# HOW HAVE JURIES CHANGED?

- Juries More Punitive
  - Punish plaintiffs, criminals, defendants
- Defensive Attribution
  - May be less likely to blame crime victim
- Demand Better Security (see President's speeches)

# OVERCOMING JUROR BIAS- Responsibility/Accountability

- Create Picture of the Victim as Responsible Member of Society
- Emphasize the Victim's Role, as mother, employee, daughter, etc.
- Defendant Trying to Avoid Responsibility

# RESPONSIBILITY/ ACCOUNTABILITY

- Patriotism after Sept. 11
- People much more aware of their rights as Americans
- Cough your damages in terms of loss of freedom and loss of rights guaranteed to Americans
- Right to pursue life, liberty and happiness



# RESPONSIBILITY/ ACCOUNTABILITY

- Right to hold responsible party accountable
- Duty to “step-up” and take responsibility
- Bringing lawsuit for accountability as self-reliance.
- Plaintiff doing everything she can to recover from injury.

# RESPONSIBILITY/ ACCOUNTABILITY

- Differentiate between responsibilities of criminal and responsibilities of corporate defendant regarding security
- Post Sept. 11 media coverage has highlighted instances of good security stopping criminals

# OVERCOMING JUROR BIAS- Defensive Attribution

- An example of a case where victims of crime are blameless
- Warning: Do not compare your case to or mention September 11
- Victims could not have improved security measures
- Victims had no input in design of buildings

# DEFENSIVE ATTRIBUTION

- Victims could not keep terrorists out of country
- Our cases are the same: Our clients could not have made decisions that would have prevented crime
- Use voire dire questions to use jurors as witnesses to victim lack of input in security decisions

# OVERCOMING JUROR BIAS-

## Norm Bias

- Because of intense media coverage,
- Good security is “normal”
- Poor choices about security deviate from normal

# OVERCOMING JUROR BIAS-

## Availability

- Emphasis on discovery
- Jurors want to know why
- Find out who made decisions
- Ask why decisions were made

# OVERCOMING JUROR BIAS- Suspicion

- Jurors are suspicious of plaintiff lawyers, and plaintiff
- People see corporations as victims of Sept. 11 criminals
- Do not make unsupported allegations of misconduct
- Take “responsibility” for your proof
- Personalize the defendant

# POST SEPTEMBER 11 THEMES

- We seek to hold accountable those companies that could have prevented this attack.
- This is a "new" dangerous world and security is essential.
- You can no longer ignore security.



# POST SEPT 11 THEMES

- Crime can be prevented. This crime could have been prevented.
- Lax security "must be reformed."
- If you allow criminals to "operate" on your property, you will be held accountable.

# POST SEPT 11 THEMES

- The crimes that have happened on this property should have been taken more seriously.
- A landlord must do everything reasonably in its power to prevent crime
- on its property.