

THE JURY'S CHANGING FACES: PROFILES OF OUR NEW DECISION MAKERS

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SOME THOUGHTS ON JURY SELECTION

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Every experienced trial lawyer and every client who has been a frequent participant in the world of litigation has a story or two to tell about the weird and sometimes awful ways in which juries meet out their version of justice. The randomness of trial results often cannot be explained by differences in the evidence. In truth, the differing results are very frequently more driven by the makeup of the particular jury than by any other single factor.

So, how do we go about picking the “perfect” or maybe the “least dangerous” jury? Many experienced trial lawyers believe, and will fairly confidently state, that “they can smell a good or bad juror in their jurisdiction” or they “know one when they see one.” Some of those lawyers are convinced that they don’t need the assistance of detailed juror questionnaires or a rigorous process to identify individual juror beliefs about certain core issues that have been repeatedly proven to be highly predictive of the way a juror will vote when the door of the jury room slams shut.

I used to be one of those trial lawyers who believed that I could “pick” the right jurors by considering some pretty simple demographics like gender, race, job description, political affiliation, sometimes religion and often the area of the town or county where the juror resided. I no longer believe. I have seen and experienced too many instances where all of the traditional “experienced trial lawyer” criteria resulted in selecting jurors that had a very different mind set than the demographics would suggest.

In my experience, the dilution of demographics as a strongly predictive analytical method (if it ever truly was strongly predictive) is the result of obvious changes in the way we all acquire and expand our knowledge of what is going on in the world around us and how the corporate world functions.

The explosion of instant “sound bite” journalism that has resulted from the dumbing down of television news shows and increasing reliance on the internet has exposed everyone to a broader cross-section of information and misinformation than used to be the case. People who used to care little about anything other than local affairs are now exposed to information on numerous subjects that they previously were oblivious to. Most people simply now have more information on more subjects than they used to. Some of those subjects are central to how they may decide cases involving our clients.

Also, the fact that most newspapers (for those increasingly fewer people who tend to read them) are very liberal has created a very negative view of the corporate world. In a word, many many jurors believe that corporations care not a whit about their welfare. Many jurors, both plaintiff and defense, also start out believing that corporate executives are only interested in what benefits them and the company financially, and they believe that executives will conceal any information that would be detrimental to the company.

Of course, frequent criminal prosecution of high profile business executives for serious crimes has not helped reassure jurors that corporate America can be relied on to do what is right.

And, courtroom drama has become a favorite evening TV diet in huge number of homes. Law & Order, Boston Legal and similar shows make viewers self professed authorities on how the courtroom works, and many people now actually want to be on a jury so that they can play in the same sandbox. And, there is a not subtle pressure to render verdicts that will be interesting to the media. Usually defense verdicts are not in that category.

All of these influences, and others that you are familiar with, have created a very hazardous landscape when the courtroom fills with prospective jurors and the judge wants to be sure to get jury selection over with in an hour or two. I believe it is critically important that, as primarily defense lawyers, we recognize what jury research has repeatedly shown---we must work hard to probe individual jurors during the vore dire process to identify those who can be fair to our corporate clients. Using vore dire to “pre-sell” our case as the primary goal is a very serious mistake. That should not be the goal of vore dire.

Finally, as can be seen from the accompanying power-point presentation the jury pools are becoming more populated by younger jurors that have very different beliefs about corporate America and other issues that are often central to the cases we try. Some of the trends resulting from the change in the jury pool are actually encouraging.

As you will note, the data that is contained in the power-point slides that accompany this presentation is largely drawn from a large and statistically robust study of juror beliefs and attitudes by the jury research firm of Mattson & Sherrod. Some of you have, I know, worked with Mattson & Sherrod over the years. They are an exceptionally talented group and have been responsible for helping create the winning strategy for many very complex and difficult cases. Over the years I know they have helped Snell & Wilmer trial lawyers win cases that simply could not have been won without their help and insight. I believe you will find the information Mattson & Sherrod has compiled to be very interesting.

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REFLECTIONS ON THE
BLACK ART OF JURY SELECTION

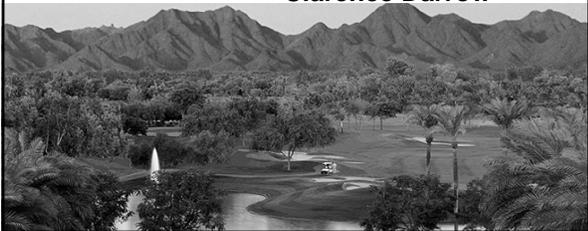
Warren Platt
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Phoenix & Tucson, Arizona Costa Mesa, California
Salt Lake City, Utah Las Vegas, Nevada



**"Almost every case has been won or lost
when the jury is sworn,"**

Clarence Darrow



THE CHANGING FACE
OF THE JURY



WHAT WILL THE JURY OF THE FUTURE LOOK LIKE?

Demographers have predicted several trends:

- Bruce Butterfield: Because Millennials grew up "socially connected" and "multi tasking" they will be more collaborative, more flexible, more progressive and more accepting of risk.
- PEW Research Center: Because Millennials grew up in "blended families" they will be more socially tolerant, more liberal and less critical of both corporations and government regulation of corporations.
- General Social Survey: Millennials will have lower social trust, less confidence in traditional institutions and will be less religious.

HOW WILL THESE PREDICTED CHANGES AFFECT THE JURY?

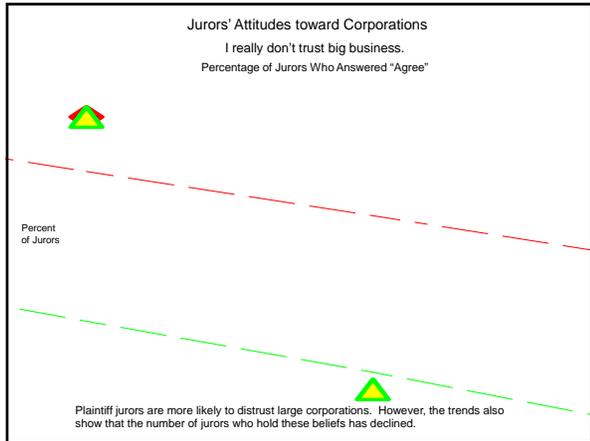
To answer this question, Mattson & Sherrod, Inc. drew a nationally-representative sample of "mock jurors" from its data archives for each of the past eight years (1998-2006). The study assembled the demographics, attitudes and verdicts of 5,220 mock jurors (approximately 600 per year, balanced by region) from across the country.

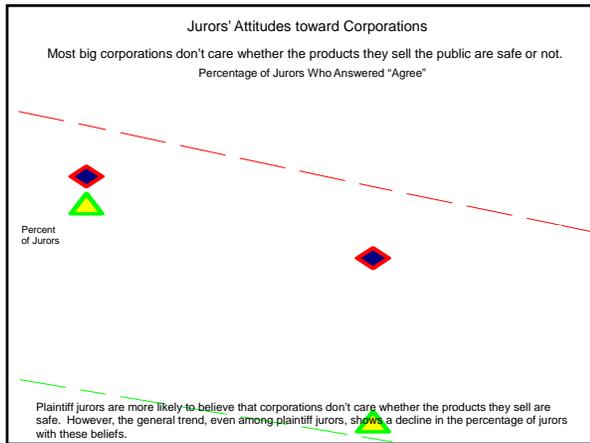
At the beginning of each mock trial, participants filled out an extensive multiple-choice questionnaire. This questionnaire recorded jurors' demographics, attitudes, beliefs and lifestyles. At the end of the mock trial, after the "jurors" have heard each side's case, the jurors were asked to render a verdict.

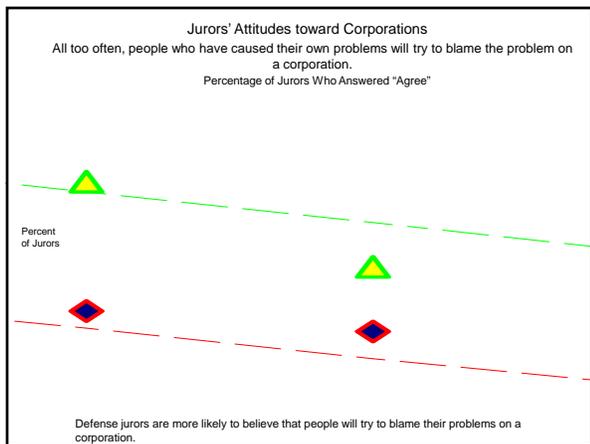
- Using that data Mattson & Sherrod was able to identify statistical relationships between jurors' pre-trial attitudes and beliefs and their eventual verdict decisions.
- It was also possible to identify differences between the generations, and see how "Generation X" – the jurors of tomorrow – see the world and how their attitudes might affect jury verdicts.

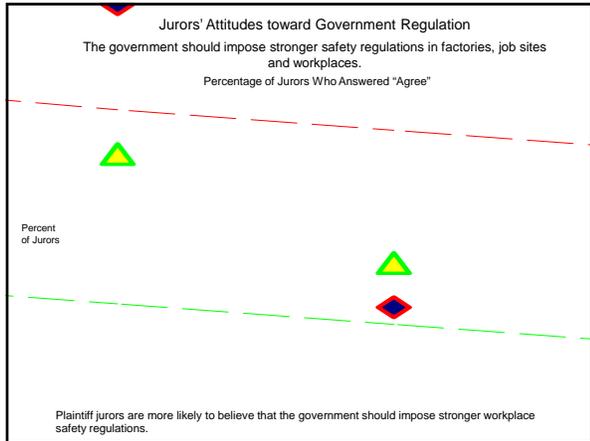
ATTITUDINAL DIFFERENCES AND VERDICTS: ATTITUDES TOWARD CORPORATIONS, REGULATION AND LITIGATION

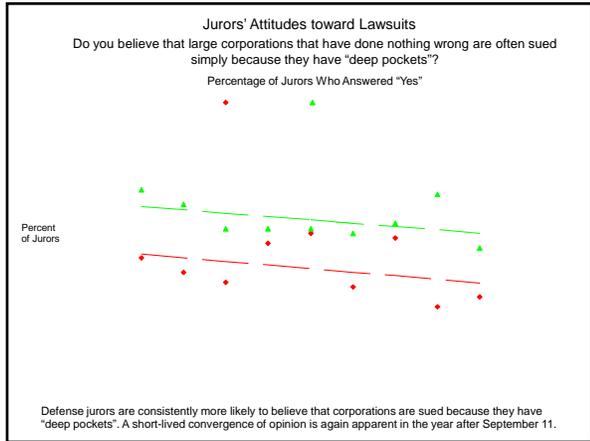
Many trends are already evident in jurors' changing attitudes over time, regarding corporations and lawsuits against corporations. For example:

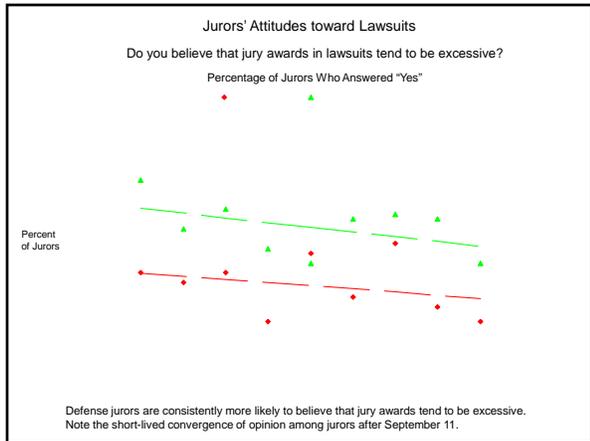


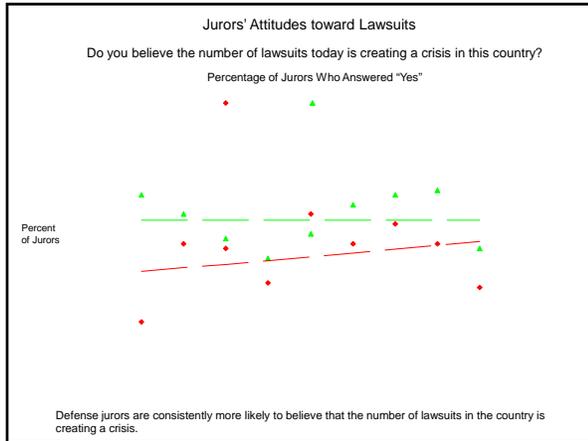








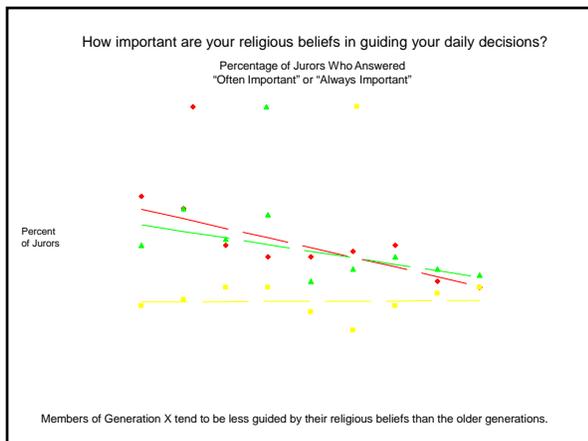


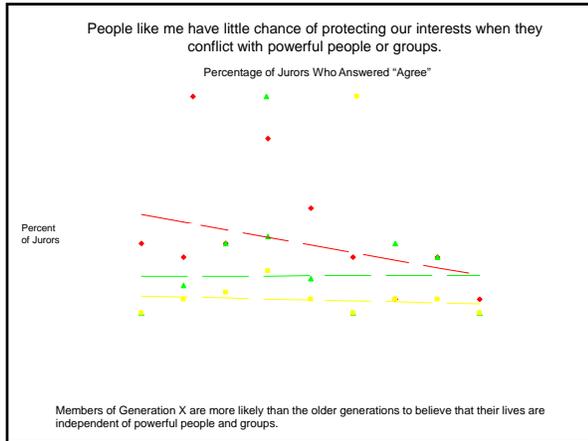


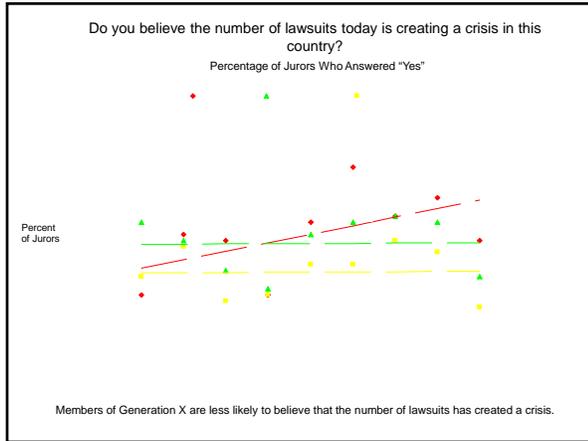
THE GENERATION GAP

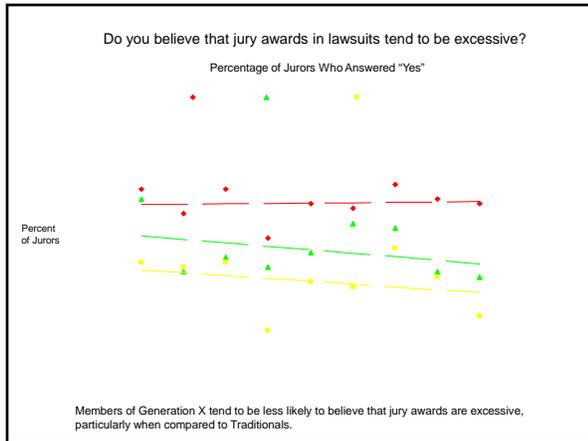
Jurors' changing attitudes over time are even more interesting when we compare them across generations:

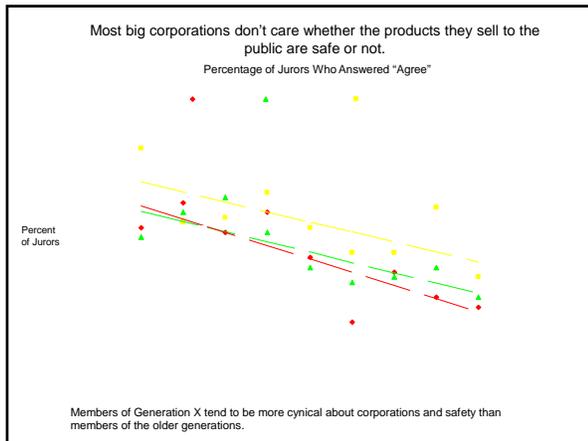
- "Traditionals" (born before 1945)
- "Baby Boomers" (born between 1946 and 1964)
- "Generation X" (born between 1965 and 1981)
- "Millennials" (born between 1982 and 2002) may also be different, but are as yet too young to have entered the jury pool in significant numbers.













CONCLUSIONS:

- Jurors are becoming somewhat more trusting of corporations but also more accepting of lawsuits against corporations.
- Trust in corporations is highest and acceptance of lawsuits against corporations is lowest among "Traditionalists," followed by "Boomers" and "Gen Xers".
- How Millennials will contribute to these trends is yet to be empirically determined. However, based on demographers' predictions, Millennials may well be more trusting of corporations than their immediate predecessors, "Gen Xers" and "Boomers." Thus Millennials may be more likely to favor the defense.
- At the same time, Millennials may also be more accepting of lawsuits against corporations, more demanding in their assessment of evidence and less likely to fit either the "victim" profile of a classic plaintiff juror or the "empowerment" profile of a classic defense juror.

JUROR QUESTIONNAIRE

Thank you for coming to court as a potential juror. Before the case can start, a jury must be selected. The judge and the people involved in the case need to know something about you in order to select jurors who can be fair to both sides. In order to move jury selection along as quickly as possible, I have prepared this background questionnaire to be completed before you are called to the jury box.

The questions on this form are designed to help the court and the lawyers learn something about your background and your views on issues that may be related to this case. The questions are not asked to invade your privacy, but to make sure that you can be a fair and impartial juror. This questionnaire will remain confidential.

You should answer the questions carefully and completely. Please do not leave any questions blank. If a question does not apply to you, simply write N/A (for Not Applicable) in the space for the answer. If there is no response to a question, we will assume that you mistakenly skipped it and may ask you about it in court.

Since we need to make copies, please **DO NOT** write on the back of any page. If you need more room, continue at the bottom or side of the page or on the blank page at the end of the questionnaire. When you have completed the questionnaire, please give it to the attendant.

You may be asked follow-up questions later to clarify your answers. If there are questions that you would feel more comfortable answering in private, simply write "private" in the space provided for your answer and circle the question number. The follow-up questions on that topic will be held out of the presence of the other jurors. After you have finished the questionnaire, let the clerk know that you have circled one or more question numbers.

If you have trouble reading, understanding, or filling out this form, please let the court clerk know.

PLEASE REMEMBER THAT YOU ARE ANSWERING THESE QUESTIONS UNDER PENALTY OF PERJURY. YOUR ANSWERS MUST BE TRUE AND COMPLETE.

JUROR QUESTIONNAIRE

NAME: _____

1. Name/Juror Number: _____

2. Age: _____ Date of Birth: _____

3. Gender (please circle): Male Female

4. Ethnic Origin: _____

5. City or town where you live: _____ For how long? _____

6. Please list other areas you have lived: _____

7. Which of the following best describes your residence?

- _____ Own House, Condo or Townhouse
- _____ Rent House
- _____ Rent Apartment
- _____ Live with others who own or rent
- _____ Other: _____

8. What is your current employment status:

- | | |
|--------------------------|------------------------|
| _____ Employed full time | _____ Looking for Work |
| _____ Employed part time | _____ Retired - When? |
| _____ Homemaker | _____ Disabled |
| _____ Full-Time Student | _____ Other: _____ |

9. What is your occupation? Or what was it if retired, unemployed, or disabled?

10. Please state the following regarding your current or most recent employment:

- (a) Name of Employer: _____
- (b) Location: _____
- (c) Job Title: _____
- (d) When did you begin working there? _____
- (e) Do/did you supervise other persons? Yes _____ No _____ How many? _____
- (f) Do/did you hire and fire employees? Yes _____ No _____
- (g) What other positions have you held there? _____

JUROR QUESTIONNAIRE

NAME: _____

11. What other jobs or occupations have you held?

12. Which group do you identify most with?

- Workers _____
- Mangers/Supervisors _____
- Executives _____
- Retired workers _____

13. Have you or anyone close to you ever owned their own business? Yes _____ No _____

(a) If "yes" please describe the type of business, the number of employees and the length of time the business is or was owned:

14. Do you have any strong opinions of [NAME OF COMPANY] or any of its products?

Yes _____ No _____

(a) If yes, please explain:

15. Have you or anyone close to you ever had a strong negative experience with [NAME OF COMPANY] ? Yes _____ No _____

(a) If yes, please explain:

16. Have you heard, seen, or read any media coverage about [ISSUE]? If yes, please describe.

17. Do you believe that [NAME OF COMPANY] would knowingly hold back information about [ISSUE]?

- No
- Probably Not
- Probably

JUROR QUESTIONNAIRE

NAME: _____

Yes

18. Do you believe that [NAME OF COMPANY] would knowingly [ISSUE]?

- No
- Probably Not
- Probably
- Yes

19. When you hear about individuals suing [TYPE OF COMPANY] , do you tend to think that these lawsuits are justified?

- No
- Probably Not
- Probably
- Yes

20. Do you disagree, somewhat disagree, somewhat agree or agree with the statement, "There are too many lawsuits filed these days."

- Disagree _____
- Somewhat Disagree _____
- Somewhat Agree _____
- Agree _____

21. Please indicate whether you agree or disagree with the following statements. **Circle** the answer that best applies, using the following key:

A=AGREE, SA=SOMEWHAT AGREE, NO=NO OPINION, SD=SOMEWHAT DISAGREE, D=DISAGREE

- | | | | | | | |
|-----|---|----------|-----------|-----------|-----------|----------|
| (a) | Most large companies are run in a very ethical and honest manner. | A | SA | NO | SD | D |
| (b) | Company executives will lie to increase their profits. | A | SA | NO | SD | D |
| (d) | Large corporations routinely put profits over product safety. | A | SA | NO | SD | D |
| e) | Large companies won't disclose damaging information about [ISSUE] until they are forced to do so. | A | SA | NO | SD | D |

22. When I hear that an individual has filed a lawsuit against a corporation, I usually think the corporation deserves the blame and the individual deserves the compensation.

- Disagree _____
- Somewhat Disagree _____

JUROR QUESTIONNAIRE

NAME: _____

Somewhat Agree _____
Agree _____

23. Do you believe the monies awarded by juries today are (check one):

- _____ Too low
- _____ About right
- _____ Too large
- _____ Much too large

24. Which best reflects your feelings about awarding punitive damages (money damages awarded for the sake of example and by way of teaching a lesson)?

- _____ Generally favor _____ Uncertain _____ Generally oppose _____ No opinion
- _____ Depends on circumstances

(a) Please comment:

25. In a legal matter, have you or anyone close to you ever: (check all that apply)

_____ sued? _____ been sued? or _____ been a witness?

(a) Please explain the circumstances:

26. Have you, or has anyone close to you, ever worked for a lawyer, law firm or the courts?

Yes _____ No _____

(a) Please explain:

JUROR QUESTIONNAIRE

NAME: _____

27. Have you, or has anyone close to you, ever used the services of a lawyer? Yes _____ No _____

(a) Please explain:

28. Do you know any attorneys or judges? Yes _____ No _____

(a) If yes, please identify who they are and your relationship to them:

29. Do you know anyone on this jury panel? Yes _____ No _____

(a) If yes, who?

(a) If yes, how many? _____

30. What is the level of education you have completed?

- _____ Grade school
- _____ High school graduate or GED
- _____ Some college or Junior College Degree
- _____ College Degree
- _____ Graduate Degree
- _____ Technical, trade, or business school

31. Your present political party: _____ Democrat _____ Independent/Other _____ Republican

32. After completing this questionnaire, is there any reason at all (for example, religious, political or personal) that would make it difficult for you to be a fair and impartial juror in this case?

_____ Yes _____ No

(a) If yes, please explain:

60. Is there anything you feel is important for the parties in this lawsuit to know about you?

(a) If yes, please explain:

JUROR QUESTIONNAIRE

NAME: _____

I declare under penalty of perjury, that the following answers are true and correct to the best of my knowledge.

Executed in the County of _____ on _____

SIGNATURE



Warren Platt

Partner, Executive Committee Member

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Practice is concentrated in civil litigation matters with principal emphasis on defense of major product liability suits for national and international manufacturers; complex commercial litigation; and defense of accounting malpractice litigation for national and regional public accounting firms.

National and international representative clients include: Ford Motor Company, Price Waterhouse Coopers, Emerson Electric Company, and Caterpillar Inc.

PROFESSIONAL RECOGNITION AND AWARDS

Named Chambers USA: America's Leading Lawyer for Litigation: Products Liability

The Best Lawyers in America(R), Editions 1983 - 2007

Named Southwest Super Lawyer by Law & Politics Magazine (2007)

The International Who's Who of Product Liability Defense Lawyers, 5th Edition

EDUCATION

University of Arizona (J.D., 1969)

Order of the Coif

Managing Editor, *Arizona Law Review* (1968-1969)

Graduated fifth in class of 183

Michigan State University (B.A., 1965)

COURT ADMISSIONS

Supreme Courts of Arizona, California and Texas

United States District Court, District of Arizona

Various United States District Courts in Texas,

California, Illinois, New York and other states

United States Courts of Appeal, Seventh, Ninth and Tenth
Circuits

United States Supreme Court



