



TRIAL BEHAVIOR
CONSULTING

Risk Communication

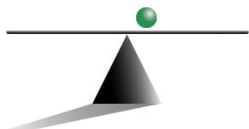
Mealey's Water Contamination Conference

The Ritz-Carlton – Marina del Rey

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President, Trial Behavior Consulting

The General Features of Cognition and Judgment That Affect Perception of Risk

- **These features of cognition affect how judges, jurors and the public react**
- **They affect all decision makers, not just jurors**
- **We all commit these cognitive errors**

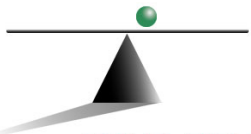


Hindsight Bias

- **Tendency to overstate the probability of a known outcome after it occurred**
- **If something bad happens, it was foreseeable**
- **Conclude that decision makers could foresee it**
 - Examples: 9/11, dot com crash

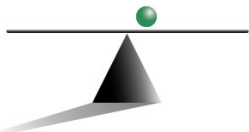
Impact of Hindsight Bias

- **Perc manufacturers should have known that little “mom and pop” businesses would pollute ground water when disposing of Perc**
- **Since the Dioxin could be released from the paper mill, they should have prepared for that**



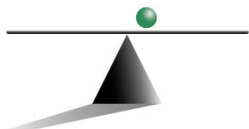
Hindsight Bias

- **Everyone subject to this tendency– often referred to as “Monday morning quarterbacking”**
- **Research shows you can educate and alert decision makers to this tendency**
- **In trial, in oral arguments – neutralize this logical fallacy**
- **Inoculate against this tendency**



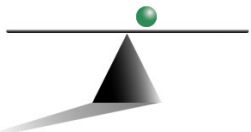
Anchoring and Adjustment

- **Tendency to give undue power and weight to anecdotal evidence**
- **Hiding dead ducks at Rocky Mountain Arsenal – proof of knowledge of hazards**
- **Yellow stains from the use of well water reveals diesel fuel contamination**



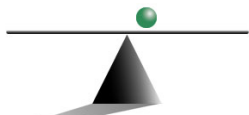
Anchoring and Adjustment

- **Numbers mentioned have an impact way beyond their actual value**
- **Numbers given to jurors for damages – jurors are searching for guidance**
- **Effective plaintiff attorneys raise the damages by mentioning dollar figures early in a trial**



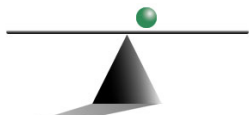
Counterfactual Arguments

- **Refers to the undoing of an event**
- **Refers to the ease with which something bad can be undone**
- **If only (x) had been done, this all could have been prevented**



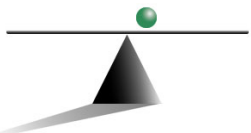
Counterfactual Arguments

- **If only the equipment had been monitored, this could have been prevented**
- **If only they had investigated MTBE before they decided to use it, this could have been avoided**



Counterfactual Arguments Enhance Hindsight Bias

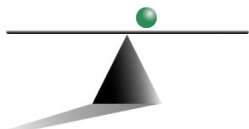
- **Jurors overestimate the foreseeability of negative events**
- **For jurors, failure to take reasonable care hinges on foreseeability and thus proves negligence**



Handling Counterfactual Arguments

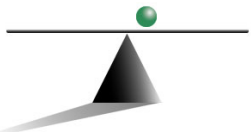
- **Respond to an “if only” statement with an “even if” argument:**

“Even if we had further investigated the damages of asbestos, the government still required its use”



Severity Effect

- **The more severe the impact of an act, the more responsibility is placed on the offending party.**
- **All things being equal: the greater the impact of the pollution/contamination, the higher the percentage of responsibility**

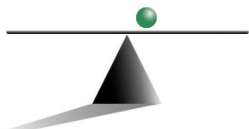


Severity Effect

- **Example: If a car hits a child there is a greater percentage of responsibility on defendant when brain injury occurs versus the child breaking his/her leg**
- **Research on this shows toxic tort litigation works the same way**
- **The percentage of responsibility is less if only a small area of the community is contaminated vs. the whole community**

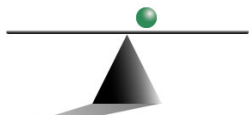
Juror Characteristics to be Aware Of

- **Anxiety**
- **Bias Against Corporations**
- **Environmental Attitudes**
- **Cynicism or Skepticism**
- **Belief in Conspiracy**
- **Refusal to Accept Science**
- **Lack of Faith/Trust in Government**



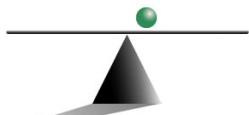
If experts said it was safe, would you work in a building that contained asbestos?

	California	Texas
Definitely Yes	8%	10%
Probably Yes	38%	29%
Probably No	26%	24%
Definitely No	28%	37%



Corporations put profits ahead of safety.

	California	Texas
Agree Strongly	59%	56%
Agree Somewhat	27%	29%
Disagree Somewhat	10%	10%
Disagree Strongly	4%	5%



The American public is at the mercy of manufacturers who produce harmful products but fail to properly warn the public of their dangers.

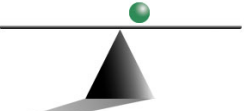
	California	Texas
Agree Strongly	35%	36%
Agree Somewhat	37%	34%
Disagree Somewhat	20%	18%
Disagree Strongly	8%	12%

To what extent do you believe that corporations and the government conspire together to hide important health and safety information from the public?

	California	Texas
I am positive that they conspire.	23%	20%
I suspect that they conspire.	46%	46%
I am doubtful that they conspire.	21%	23%
I do not believe they conspire.	10%	11%

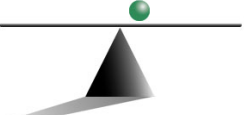
How concerned are you about environmental toxins which may harm you?

	California	Texas
Very concerned	60%	53%
Somewhat concerned	34%	36%
Not very concerned	4%	8%
Not at all concerned	2%	3%



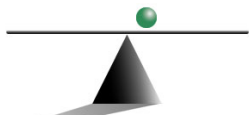
When I hear about a substance that causes cancer, it worries me.

	California	Texas
Agree Strongly	49%	51%
Agree Somewhat	39%	36%
Disagree Somewhat	10%	10%
Disagree Strongly	2%	3%



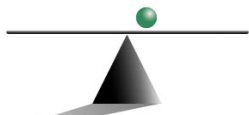
The health of Americans is getting worse because of toxic contaminants in our environment.

	California	Texas
Agree Strongly	39%	39%
Agree Somewhat	35%	34%
Disagree Somewhat	17%	14%
Disagree Strongly	9%	13%



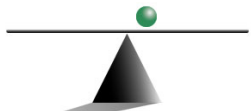
How often do you read warning labels on the products you use?

	California	Texas
Always	52%	47%
Sometimes	41%	43%
Rarely	6%	8%
Never	1%	2%



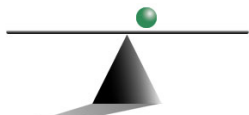
Do you consider yourself to be an environmentalist?

	California	Texas
Yes	72%	61%
No	28%	39%



Awarding punitive damages against large corporations is the best way to get them to behave more responsibly.

	California	Texas
Agree Strongly	40%	38%
Agree Somewhat	34%	29%
Disagree Somewhat	15%	17%
Disagree Strongly	11%	16%



Generally, do you think governmental safety regulations for corporations are:

	California	Texas
Too tough	4%	6%
About right	35%	41%
Not tough enough	61%	53%

Have you ever been exposed to substances or chemicals which were a potential health hazard?

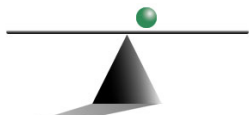
	California	Texas
Yes	62%	55%
No	38%	45%

The health of Americans is getting worse because of toxic contaminants in our environment.

	California	Texas
Agree Strongly	39%	39%
Agree Somewhat	35%	34%
Disagree Somewhat	17%	14%
Disagree Strongly	9%	13%

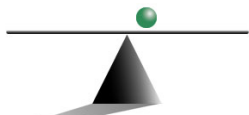
regulations for corporations are:

	California	Texas
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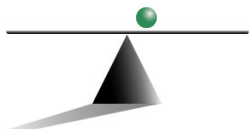
We could eliminate almost all the toxic hazards we have in industry, the government and the scientific community worked together.

	California	Texas
Agree Strongly	49%	50%
Agree Somewhat	29%	27%
Disagree Somewhat	14%	12%
Disagree Strongly	8%	10%



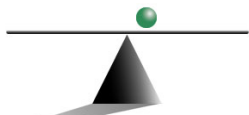
What Research Communication Shows

- **Media coverage in stories about risk show coverage is not about the risk but about blame, fear and anxiety.**
- **A scary story is more interesting and is given coverage.**
- **Environmental politics are the focus more than environmental risk**
- **Government sources are the primary source of news.**



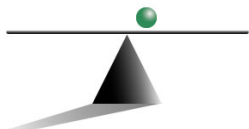
Spin Doctoring Cannot Overcome Problems

- **Acknowledge juror anxiety**
- **Accept responsibility**
- **Assure them the problem is being addressed**



Dealing with the Media

- **Must be skillful – be prepared with sound bites that will be quoted**
- **For reassuring messages that downplay risk, they must be well presented**
- **Don't anticipate bad treatment by the media**
- **Take a stance and focus more on opinion than data**



Dealing with the Media

- **If you have data, simplify it**
- **Share control of the solution: the most impactful statements acknowledge problems**
- **Explain how risk is being mitigated**