



PROGRAM MATERIALS

Program #2916

February 6, 2019

Trying Employment Cases in the Trump Era

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JUROR BIAS IN THE TRUMP ERA

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FACTORS CONSIDERED IN JURY SELECTION

- Race
- Sex
- National Origin
- Age
- Profession
- Education
- Disabilities
- Juror's employment experience
- Juror's family's employment experience
- Sexual Orientation
- Organizational Memberships
- Religion
- Newspaper and magazine choices
- Political Leanings
- Dress
- Engagement with other jurors
- Engagement with lawyers
- Responses to voir dire questions

- Men who sexually harassed women 20 years ago should keep their jobs today (Source: YouGov.com)

	Clinton voters	Trump Voters
Female over 65	10	80
Female 30-64	18	55
Female under 30	15	48
Male over 65	20	65
Male 30-64	22	65
Male under 30	18	46

PROBLEMS FACING MINORITIES

Among registered voters

	ALL	TRUMP VOTERS	CLINTON VOTERS
Too much has been made	32%	51%	16%
Too little has been made	32%	16%	49%
About right	32%	28%	34%

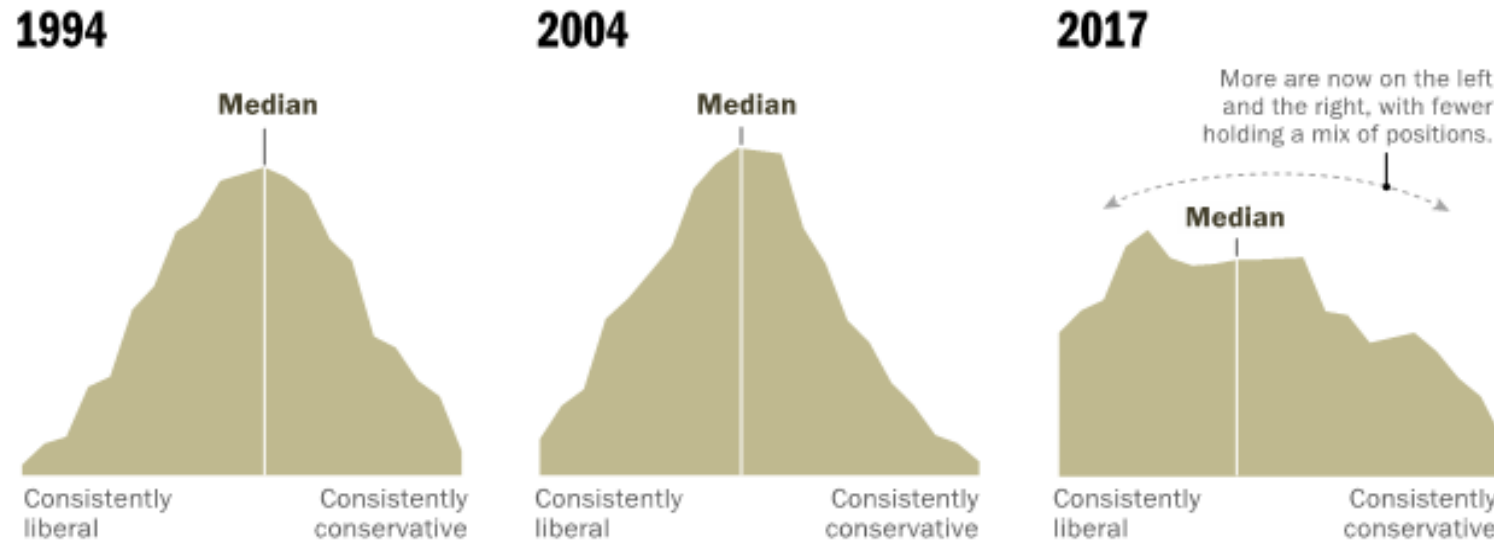
CBS News/New York Times

Has U.S. gained or lost from globalization?
(among registered voters)

	All	Trump voters	Clinton voters
Gained more	35%	17%	53%
Lost more	55	76	38
Both equal	2	2	2

Only about a third of Americans have a mix of conservative and liberal positions; in 2004, nearly half had mixed political values

Distribution of the public on a 10-item scale of political values



Notes: Ideological consistency based on a scale of 10 political values questions (see report methodology).
Source: Survey conducted June 8-18, 2017.

PEW RESEARCH CENTER

HIERARCHY OF PREFERRED JURORS

- 1. Jurors who agree with you who can persuade others of their opinions.
- 2. Follower Jurors who agree with you.
- 3. Follower Jurors who disagree.
- 4. Jurors who disagree with you who are likely to anger those who do.
- 5. Jurors who agree with you are likely to anger those who don't.
- 6. Jurors who disagree with you who can persuade others of their opinions.

SCENARIO ONE: THE RACIST EPITHET

- White coworker uses racial epithet in the presence of non-white coworker
- Non-white worker complains to HR
- HR warns white coworker but minimizes the complaint because coworkers were friends

VOIR DIRE QUESTIONS FOR SCENARIO ONE

- Have you had negative experiences at work because of your race?
- Did your parents have any particular bias against people of any race?
- Do you think you grew up with any bias against people of any race?
- Were you raised in a racially integrated neighborhood?
- Do you believe that employers should have a zero tolerance policy and terminate any employee who makes an inappropriate racist remark?
- Can you think of any reason why an employer might exercise leniency towards an employee who used a racial epithet in the workplace?

MESSAGES THAT RESONATE WITH JURORS

- 1. The Company believes racist comments are hurtful.
- 2. The Company will terminate employees for violating harassment policy.
- 3. The Company, however, does not want employees to be discouraged from reporting complaints.
- 4. Some employees deserve a second chance.
- 5. Not all complaints can be completely believed.

SCENARIO TWO: REVERSE DISCRIMINATION

- U.S. subsidiary of a Mexican Company.
- Local CEO is non-U.S. citizen
- Many of the top managers of the company are Mexican citizens.
- White employee complains when non-U.S. citizen is promoted to management job in lieu of him.

VOIR DIRE QUESTIONS FOR SCENARIO TWO

- Have you ever lost out on a job opportunity to someone from a foreign country? How did you feel about that?
- If an American company were to set up a subsidiary in Mexico, can you think of any reasons why they might want to bring in American managers?
- If a company has a lot of clients in foreign countries is it justified in preferring employees who are bilingual and who can speak the languages of those countries?

MESSAGES THAT RESONATE WITH JURORS

- 1. Company wants to create jobs and opportunities in the United States.
- 2. Company uses objective processes for selecting candidates for jobs.
- 3. The selected candidate was objectively more qualified than the candidate who was not selected.

SCENARIO THREE: ME-TOO

- Female employee verbally counseled by male manager and warned about serious performance problems and told that she will not receive a bonus.
- Female employee complains to HR that manager is retaliating against her because she would not go on a date with him and that he frequently tells sexually inappropriate jokes.
- Other employees corroborate that HR manager once told a sexually inappropriate joke at an after work Happy Hour but no one has ever witnessed him asking any employee on a date.

VOIR DIRE QUESTIONS FOR SCENARIO THREE

- 1. Do you think that people sometimes make false accusations of harassment against their supervisors or exaggerate what might have happened? If so, why do you think people do that?
- 2. What things would you consider when determining whether someone is telling the truth about?
- 3. [To women jurors]: Would you be more or less likely to complain about a male supervisor acting inappropriately if you knew he was likely to get fired?
- 4. If a male employee acts inappropriately towards women in the workplace should he be fired or can a company consider imposing more lenient discipline against him?

MESSAGES THAT RESONATE WITH JURORS

- 1. Company recognizes challenges for women in the workplace and strives to treat women equally.
- 2. Company takes its sexual harassment policy seriously.
- 3. Company does not want employees to be discouraged from reporting harassment.
- 4. Company wants to be fair to the accused.

SCENARIO FOUR: SENIOR DOWNSIZING

- Company reduces workforce from 100 to 80
- Mean age of 20 terminated employees is 58
- Mean age of 80 terminated employees is 35
- Company justifies termination by arguing that it was trying to eliminate higher paid positions and employees whose skills had become outdated.

VOIR DIRE QUESTIONS FOR SCENARIO FOUR

- 1. In contrast to many countries, American law allows companies to terminate employees so long as it is not for a discriminatory reason? How do you feel about that?
- 2. Have you or a loved one ever been laid off from a job for no fault of your own? How did you feel about that?
- 3. What do you think an employer should do if an older employee's performance falls off?
- 4. Have you ever had difficulties dealing with an older employee because they were too slow or inefficient? What feelings did you have as a result of that experience?

MESSAGES THAT RESONATE WITH JURORS

- 1. The RIFd employees were good people.
- 2. The company struggled with the decision.
- 3. The company relied on objective factors and had a process.
- 4. Sometimes difficult decisions have to be made for the long term benefit of the company and its employees.