
**The Effects of September 11:
In the Jury Room and Across America**



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Since the terrorist attacks of September 11, 2001, there has been a flood of conjecture in the media and the legal community about the impact those events would have on juries. There were many concerns about whether jurors would be able to focus; about whether damages awarded would be affected as individual losses were seen as insignificant compared to the terrorist attacks and the dramatic losses of life; and about whether jurors would blindly stand in line behind government and corporate authority at the expense of victims and individual citizens. The initial fears have calmed somewhat over the past few months, and interesting data has been collected both via courtroom experiences and by national pollsters and researchers. It is now possible to begin the review of the actual effect of these complex and tragic events on our society and jury system.

Courtroom experiences.

In the first 3 months following September 11, Keene Trial Consulting completed 18 focus groups and 11 jury selections. Every case but one was won by the Plaintiff. Even the commercial cases were all won by Plaintiffs. Two of the cases set damages records in their venues.

From the perspective of a psychologist and trial consultant, there were several phases of reaction to the terrorist attacks that were apparent in the courtroom.

1. Denial and shock.

This was a relatively brief phase, but devastating if you were at trial then. For the first few days or weeks following the terrorist attacks, jurors were in shock. They were distracted. They were in shock. Numb. They were unable and unwilling to process difficult information, and sought simple, comforting explanations for painful tragedy. The single plaintiff loss mentioned earlier occurred during this phase.

2. Anger and protectiveness.

This phase was also relatively short-lived but resulted in a desire to punish wrongdoers and protect the hurt or injured through compensation. It was also marked by an increased level of adoption of the view that a bad outcome is a reflection of bad conduct. This phase lasted for a few weeks, and moved to the next phase gradually.

3. Prolonged distress.

This phase has been longer than the first two phases, and continues to some fading degree even 4 months after the terrorist bombings in America. While the first two phases are most common in early reactions—raw, visceral, and gut-wrenching—the phase of prolonged distress is one where the trauma goes underground—affecting us in ways often unconscious, and not visible to the naked eye. It reflects the lasting impact of the events as a catalyst for internal change.

“Prolonged distress” is where we as a nation seem to be now. Much has been said in the media about the ways in which America has been changed forever, and how the perspective of Americans has been transformed. While it is not reasonable to make any presumptions on the permanence of this shift, the information about attitudes and behavior collected prior to and since 9/11 has documented changes in attitudes, as well as personal and social behavior. Some of the data presented later in this paper certainly supports the idea that we have been profoundly affected. However, these effects are not always easily visible. They are reflected more in non-tangible ways—how we spend our time, feelings of vulnerability, a sense of unease, more concern for family, more connectedness to others. The future effects on courtroom experiences to remains uncertain, but we can certainly begin to make some hypotheses about what may happen as we continue to monitor the courtroom impact of the terrorist attacks on our own soil.

Trial consultants and social scientists want to know *why* people react as they do, not simply how they are reacting. It is the only way to develop any informed model for anticipating how people will behave in the future. This paper will discuss what *has* been observed in the courtroom and then examine some survey data to help explain why we’re seeing what we’re seeing.

ATLA has in its’ files a paper that I wrote with Paul Begala several years ago about a model for understanding juror behavior¹. One of the important elements discussed in that publication is the notion of personal vulnerability and uncertainty. If someone is feeling relatively vulnerable and worried, they are going to identify more readily with Plaintiffs who have suffered due to an unforeseeable calamity.

Given this sort of plaintiff identification, what kinds of courtroom jury behavior have been observed since September 11th? Two exemplary cases point out a progression that was seen in numerous cases over this period:

1. A personal injury trial in its’ third week on 9/11. The trial was completed and went to the jury for deliberation on 9/14. In less than 3 hours, jurors determined there had been no negligence on the part of the physicians or hospital, despite persuasive evidence to the contrary. Jurors refused to discuss their reasoning with anyone. Recently the judge has granted a motion for a new trial. What happened? In part, jurors were in shock and did not want to consider the implications of wrong-doers living among us. They literally put on blinders that were in gross conflict with the facts and, in gross conflict with justice.
2. A second case consultation began with a focus group on September 24th, a medical negligence case in a very conservative rural county. In the history of this county, there had been one verdict awarding damages exceeding \$200,000. The focus group came back with an average award that was roughly triple what the trial attorney had expected, well above \$1,000,000. When debriefed about their reasons, and also specifically about 9/11, a male schoolteacher summed up something that got widespread agreement from others when he said “I am not aware of 9/11 having changed me any, but I guess it makes me realize more clearly that we need to look out for each other. If we don’t do that, no one else will.” At trial in December, the actual jury awards were virtually identical to the focus group. It may be that some of these core values have taken root.

For this teacher, the issue was one of his own personal obligation and responsibility as a citizen, as a member of his community, and as an American taking care of others. He did not feel that 9/11 had changed him, he felt that it had reawakened in him some values and priorities that he had neglected. By the time of this group, the issue of vulnerability had progressed from being shock and denial to one of wanting to fix the problem and make a difference. The theme that extended from this focus group into trial was one of having the power to set things right for someone who doesn't have the power to do it themselves. While this sort of theme has been understood and used for a long time, it has special resonance after 9/11, because everyone felt helpless. Everyone wanted to set things right, and no one had the power to do enough. That is why people flooded the Red Cross and other relief efforts with donations, and trekked across the country to lend a hand at ground zero. It was as close as they could come to undoing the horror that we all felt collectively.

Observations gleaned from survey data

In addition to anecdotal courtroom events, it is also important to look at reliable data from credible sources as we begin to sort out the impact of 9/11. What *really* has changed? The glut of viewpoints in the media is often no more informed by actual knowledge than the conversation around the courthouse water-cooler. There is no shortage of opinion or personal observation about what has changed (if anything) since 9/11 and what difference it all may have on jury behavior. Some say that nothing has changed. Others say that things have changed a great deal. Of those who say that things are different, there is not strong consensus over whether the changes are likely to favor plaintiffs or defendants. The only evident agreement has related to 2 areas: the enhanced public respect for public safety workers, and the problems suffered by those of certain ethnic origins.

Most people are basing their impressions on their own experiences or ideas of what they think may or may not be happening. One way we can begin to understand what is happening across the nation is to review what experienced pollsters and researchers (primarily using nationally representative samples) are saying about changes in this country since 9/11. There is some interesting data available about measurable changes that have occurred in the United States since 9/11.

What have they determined? In brief, the pattern of measurable changes that have been found include:

- an increasing conservatism,
- increased interest in the 'news',
- worry about additional terrorist attacks,
- reports of the more prominent role of religious beliefs,
- a rise in favorable opinions of Muslim-Americans,
- an increase in the importance of family life,
- the viewing of 9/11 as a 'life-altering' or 'transforming' experience,
- an increased sense of hope and optimism in the country,
- a sense of a kinder and gentler nation,
- the return of beauty, and

- subjective changes in the way we live our lives.

Increasing conservatismⁱⁱ.

Americans overwhelmingly support tighter restrictions on immigration (84%), and most (80%) say they are willing to tolerate some loss of privacy in exchange for increased security. Almost 2/3rds believe the news media provides the public with too much information -- a significant increase from the first wave conducted a month earlier -- while 89% favor federal marshals on airline flights, and 61% are in favor of pilots carrying guns.

More Americans (54%) favor allowing telephone conversations to be monitored; 80% favor allowing video surveillance of public places such as street corners; 67% favor roadblock searches of vehicles, and 67% favor having their mail monitoredⁱⁱⁱ.

"About a quarter of those polled report that their values have changed as a result of the attacks," said Rebecca McPheters, President of McPheters & Company. When asked how their values have shifted, they say they are more conservative, more cautious, and more conscious of the importance of family.

Will the increasing conservatism be permanent? It's too soon to tell^{iv}--we are in a period of time where fear trumps other considerations but it is too soon to tell whether the changes will be permanent^v.

Increased interest in the 'news'^{vi}.

According to a recent survey by the Pew Research Center, on average, just 23% of the public paid very close attention to the typical news story before the attacks. This percentage is comparable to yearly averages since 1990. After the attacks, that number more than doubled, to 48%. Pew calls this level of news interest 'unparalleled'. The latest Pew survey (conducted December 10-16, 2001) finds that 60% of Americans say they are still closely following news about the terrorist attacks. (While this represents a gradual decline since September, interest is on par with the top pre-September 11th news story—gas prices, at 61%).

Worry about additional terrorist attacks.

After the attacks, worry about additional attacks was at an extremely high level (73% in early October). By mid-December, a narrow majority of Americans (52%) say they are very or somewhat worried over new terrorist attacks. However, the reduction in worry is not consistent across the country.

An early November survey of 1,000 adults by the Pew Research Center found a widening gap in concern over future terrorist attacks between people living in major cities on the East and West coasts versus the rest of the country. Fully half (50%) of coastal urban residents are worried that they or their families could become victims of terrorism, compared with 38% of Americans living elsewhere^{vii}.

Reports of a more prominent role for religious beliefs.

A November 2001 Pew Research Center nationwide survey of more than 1500 adults reported that 78% saw the religious influence in American life growing (as compared to 37% eight months earlier)^{viii}. Interestingly enough, this dramatic shift in the perception of the importance of religion in American life was not matched by an increase in attendance at religious services—nor is there much evidence that religion is playing a larger role in Americans' personal lives at this time. (And perhaps even more important, the number of Americans who say religion is very important to them personally stands at 61%--virtually the same level as eight months ago.)

There is little evidence that many Americans who were not actively religious prior to the attacks have turned to religion in the aftermath of the crisis. What the evidence does suggest is that those Americans who were already highly religious are the ones who were increasing their religious activity even further (thus resulting in initial reports of increased prayer and religious service attendance following the attacks).

Rise in favorable opinions of Muslim-Americans.

Following the terrorist attacks, there was significant concern for the safety of Muslim-Americans. Presidential public statements calling for tolerance, television ads, and newspaper reports struggled to communicate the facts that Muslim beliefs do not support violence and terrorism, and that Muslim-Americans were not responsible for the terrorist attacks. There was an increase in hate crimes and assaults, and increased media coverage when they occurred. Simultaneously, however, there were reports of communities rallying around Muslim and Middle Eastern Americans. The available data indicates there is now a more favorable impression of Muslim-Americans in this country (59% compared to 45% in March 2001) even though 40% of the American public believe the terrorists were motivated at least in part by religious beliefs.

Surveys done by the Pew Research Center report a rise in favorable opinions of Muslim-Americans has occurred among all Americans—most significantly among conservative Republicans (64% compared to 29% in March). When people espousing a particular set of religious beliefs (i.e., Catholic, Jewish, Protestant) were polled, favorable attitudes toward Muslim-Americans had increased across all religious groups.

One important difference in the country is the fact that better educated and younger people are holding the more favorable opinions toward Muslim-Americans. About three-quarters (73%) of college graduates have positive impressions of Muslim-Americans, compared with 51% of those with high school diplomas. Sixty-two percent of Americans under age 30 have favorable opinions of Muslim-Americans compared with just under half (48%) of people 65 years of age and older^{ix}.

View of family life.

Nearly 4 in 10 Americans (37%) said they were trying to spend more time with family for the 2001 holiday season as a result of the attacks. More than half (54%) of parents say they are making more of an effort to spend time with their children. More women than men stress this extra effort to spend extra time with family (41% to 33%), and mothers are more likely than fathers to say they are trying harder to spend time with their children (59% to 47%) according to a Pew Research Center poll^x. A Gallup poll (completed December 14-16, 2001) finds similar results. Thirty-one percent of Americans surveyed reported they were spending more time with friends and family^{xi}.

'Transforming' or 'life-altering' experience.

The Washington Post and ABC News polled Americans in December 2001. They found that most respondents believed the country has permanently changed for the better as a consequence of the terror attacks and that the tragedy had 'transformed' their lives^{xii}.

A Gallup poll completed in the same time period found 33% of Americans saying their priorities had changed as the result of what they saw as a 'life-altering experience'^{xiii}. The "life-altering experience" report was especially endorsed by non-whites (50%), those who identify with the religious right (46%), and women under the age of 50 (46%). Indeed, among all age groups combined, women are much more likely than men to say the experience was 'life-changing' (42% vs. 24% respectively). Those in the 30-49 age range are most likely to express that view (38%), while those over 65 are least likely (27%). There are only slight differences among people from various regions of the country, and among people who live in urban, suburban, and rural areas.

Another indication of the impact of the terrorist attacks as "life-changing" stems from a Gallup poll completed during the first week of December, 2001. This poll is another monthly sampling poll on what Americans view as "the most important problem" facing the country today. Terrorism replaced "the economy in general" as the most important problem facing this country for the months of October, November, and December, 2001^{xiv}. (The September survey was completed September 7-10th, and therefore finished one day prior to the terrorist attacks.)

Prior to September 11, 2001, the majority of Americans said that the highest priorities for Congress and the president were education, Social Security, prescription drugs, and the economy—not foreign affairs. Following September 11, foreign policy has jumped to the top of the list of priorities for the President and Congress, soaring from a 17% 'extremely important' rating last January to a 52% 'extremely important' rating in a Gallup poll taken post September 11^{thxv}.

Increased hope and optimism.

Eight in 10 respondents in the Washington Post/ABC News survey said they were more hopeful than fearful about what 2002 holds for them personally. Additionally, 6 in 10 expressed confidence about what 2002 will hold for the world in general^{xvi}. A Gallup poll from December 2001 found fully 70% of Americans were satisfied with the way things are currently going in the United States^{xvii}.

It is of particular interest to note that prior to the September 11 terrorist attacks, the monthly Gallup polling of the “general mood of the country” had found scores consistently in the upper 40th and lower 50th percentiles. Since the terrorist attacks, paradoxically enough, the general mood of the country (as measured by satisfaction with “the way things are going in the United States”) has improved. As the Gallup Organization points out in a review of what and has not changed since the terrorist attacks—this number is just a few points lower than the all-time high for this measure (which has been in use since 1979) and it is higher even than at many points during the economic boom^{xviii}.

A kinder, gentler nation?

The Values in Action Institute (an organization founded as part of the growing positive psychology movement) recently analyzed more than 1000 pre- and post-September 11th responses to an online questionnaire (available on-line at <http://www.positivepsychology.org/strengths>) designed to measure the extent to which people see themselves as having various character strengths (e.g., curiosity, kindness, fairness, valor, hope, and humor). Despite the fact that there were no major demographic differences between those people completing the questionnaire prior to and after September 11th—there were significant ($p < .001$) increases in the level of 6 of the 24 character strengths assessed by the questionnaire. Those 6 areas were: love, gratitude, hope, kindness, spirituality, and teamwork^{xix}.

Nearly four months later, the increases seem to have leveled off, but it is not clear yet whether the scores will drop to their pre-September 11th levels or whether the changes will be more lasting. The researchers report the results support the predictions of ‘terror management theory’—that people ‘manage’ the terror of confronting their own mortality by increasing their identification with the values considered important in their culture. (Charts showing the virtues increasing from pre- and post-September 11th comparisons are available on-line at: <http://www.umich.edu/~newsinfo/Releases/2002/Jan02/r010802a.html>.)

The return of 'beauty'.

Musical tastes may have altered. In the aftermath of the attacks, musicians in New York and elsewhere gave memorial concerts to which the public flocked, seeking solace. Yo-Yo Ma played Bach at Carnegie Hall; Placido Domingo sang Verdi at the Metropolitan Opera House; Kurt Masur and the New York Philharmonic broadcast Brahms's 'German Requiem' to the entire country over PBS. What soothed us in our time of need was 'beauty'^{xx}.

The way we live our lives has changed.

An NPR/Kaiser Foundation/Kennedy School of Government Civil Liberties nationwide survey of more than 1200 Americans was completed during the first two weeks of November. Thirty-four percent of respondents indicated they were living their lives differently following the attacks. The ways respondents reported their lives had changed were in predominantly non-tangible, internal feeling states: feeling unsafe/vulnerable/tense; more aware/observant; more cautious; and more concern for family^{xxi}.

These are significant changes. It is unusual for social scientists to be able to measure such clear responses to an event. The impact of terrorist attacks on American soil is one in which we all shared. A 'defining moment', some would say, for all generations of Americans. Along that line, it is important to also mention that the Tragedy of 9/11 has a special salience for the subgroup of America that is perhaps the most maligned element of the jury pool for plaintiffs: Generation X.

Generation X members as a group have been described as selfish, insensitive, stingy, emotionally disconnected, aloof, heartless, and every other mean-spirited thing you could want. In slightly more flattering terms, they have self-described as rational, sensible, hard-working, and not heartless but certainly not coddling, either^{xxii}.

But now something very important has happened to them. They are heroes. Most of the victims of 9/11 were GenX. Most of the firefighters that ran into the World Trade Center when everyone else was running out were GenX. The police officers, the EMT's, the special forces commandoes in Afghanistan, are mostly Gen X. They are being admired as the solution to the problem, not the cause of it. In the glow of that respect, they are actually stepping up and giving more of themselves than ever before. It is changing their behavior and attitudes more than any other group. It will become imperative that the impact on this generation of jurors is considered in future jury selections.

Observations relevant to the courtroom: Blending practice & credible data

Given the observations made in actual courtroom cases on and after 9/11, along with the data just reviewed on changes across the country in response to 9/11, it becomes important to blend courtroom observation with credible sources of objective data. The following summative statements are meant to provide a sense of ‘what we know now’ about the impact of 9/11 in the courtroom.

It is important to note that this is a relatively fluid set of circumstances and that this set of observations/recommendations/thoughts about the impact of 9/11 will be changing and require updating as time passes, additional events unfold, and America continues to settle into a new reality that has been transforming and life-altering.

1. The sense of vulnerability and personal uncertainty among the juror pool is greatly increased.

Many of us are feeling comparatively unsafe, vulnerable, tense and more cautious. We are more concerned about family and loved ones. While the initial phases of raw reactivity and fear have passed, the underground reactions (resulting in an ongoing sense of vulnerability) are expected to continue for some time. This is expected to result in a positive outcome for many plaintiffs.

2. In a universe of problems over which people feel powerless, jurors feel able to help someone in need through their verdicts.

This may reflect a means of managing our own fears and anxieties about mortality—or may also reflect the self-reports of increased senses of hope, kindness, love, gratitude, spirituality, and teamwork noted by researchers. If the preponderance of jurors who see damages awards as ways to ‘right wrongs’ and thereby make a difference, plaintiffs in cases where there is clear liability will benefit.

3. Skepticism over the validity of ‘mental anguish’ has been greatly reduced.

They felt it, and they saw it in the media every day for over a month. According to researchers publishing in the *New England Journal of Medicine*’s November issue, 90% of Americans were plagued by nightmares, angry outbursts, insomnia, difficulty concentrating, or other signs of emotional stress in the days following the September 11 attacks^{xxiii}. The experience has been described as ‘transforming’ or ‘life-changing’ by more than 1/3 of Americans surveyed. Mental anguish is real. Few of us were immune. This new-found awareness should bode well for plaintiffs.

4. There is a special sensitivity for victims of catastrophic injury, but overall a wish to help others that is very new in its' extent.

Americans have been describing this desire to pollsters and in pre-trial focus groups as a new or revitalized sense of teamwork, connectedness, patriotism, citizenship, and community.

5. One of the early concerns for attorneys was that jurors would consider non-catastrophic injuries to be insignificant. That has not been the case.

This is partially due to the fact that they now see that non-economic damages are real. There are many ways (non-tangible, internal, invisible to the eye) that one can be hurt. We are more aware of that to our very core in these times.

6. Wrong-doing should be punished.

America is entering a phase of putting civil liberties 'on hold' in the interest of preventing or avenging wrong-doing. According to surveys, as a nation we are willing to be videotaped, have our conversations recorded, our cars searched, our mail examined—all in the interest of security. As alien to America as that is in some aspects, it is actually a boon to Plaintiffs as well as prosecutors. As Americans become more conservative in these arenas, they may also become more vested in righting 'wrongs' done to others.

7. Special witness issues: If a witness describes his military experience, or has served as a police officer or fire fighter, jurors have been seen literally leaning forward in their chairs. The admiration that is felt for what they have done in their public service or military service makes them a more desirable source of information.

Many have spoken of the increased sense of regard and respect we now have for police officers and firefighters. These folks are, at least for the moment, the personification of American heroes. Credentials in this area open people's minds to what a witness has to say. Conversely, if you are dealing with a public safety officer who is unsupportive of your case, you are in even more trouble than before.

8. Jurors do not want to have their heart strings tugged unnecessarily.

While always true, it may be even more true now than before. Due to the heightened sensitivity to emotional trauma, jurors are very uneasy about feeling manipulated. If possible, run a focus group to reassure yourself of how they react to the bare facts of the case, but overall, trust that they understand pain, suffering, and mental anguish more easily now than ever before. One need not explain the impact of loss through the use of expert witnesses and theorists.

9. If there is a way in which your client has helped or is helping to deal with important societal issues, you should communicate this to jurors.

Americans are much more cognizant of the importance of doing their part to help others since the events of September 11, and they respect helping behaviors in others - both people and organizations. Prime examples of themes about which jurors now have both strong and positive feelings include: a) the importance of making every day count, b) a strong sense of family & community, and c) the importance of helping others^{xxiv}.

And finally...

10. Do not pander to the jury about 9/11.

It is best to not even mention it directly. Jurors and focus group participants have very rarely indicated that they are aware of the events of 9/11 making any difference in their jury decision-making behavior. While they are able to talk about how it has made a difference for them internally and in their daily lives—they generally fail to see how that might affect their juror behavior. They have attempted to compartmentalize that experience, and with the exception of those who feel a personal connection to the attacks (a friend who worked at the World Trade Center, a relative who is now going to Afghanistan, etc.) they will not usually be able to articulate how it has touched their lives. They will tell you very clearly that any hint of trying to link the case at hand to what happened on September 11 will be seen as very negative. Their lack of insight about the impact of 9/11 in the courtroom makes it a dead-end street, and you run the risk of annoying them, confusing them, or having them see you as manipulative—none of which furthers your objectives.

As is true regarding all of these observations and the timing of shifts in attitudes, they will vary significantly depending on geography, and how closely the individual felt touched by the events of 9/11 and its aftermath. There is a social theme being heard around the country that involves kindness, thoughtfulness, generosity, and a demand for good conduct. But around that theme is the same range of individual difference that has always been a part of the American individualism. This paper seeks to describe the new themes, but it will be up to the attorney to cull out the individual elements that distinguish one unique member of a venire from another.

For additional information about models of juror behavior and strategies for voir dire, you may want to read the other papers written by Keene Trial Consulting. They are available at our website at no charge: <http://www.keenetrial.com>.

Afterword

This paper was written in the interest of sharing a portion of what we at Keene Trial Consulting have learned about successful implementation of pre-trial research, application of research to trial, and jury issues (including selection and persuasion). We hope that our efforts have been successful; your comments are greatly appreciated. All rights are reserved as to content, and any republication, substantial referencing, or excerpting of this paper is prohibited without permission of the senior author. For more information, or to discuss how we can to assist you in your litigation practice, please contact us.

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