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Bronx Cheer

Inner-City Jurors Tend to Rebuff Prosecutors And to Back Plaintiffs

They Identify With the Poor And Dislike the Powerful, Say Lawyers on Both Sides

No Negligence, but Pay Up

BY ARTHUR S. HAYES

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NEW YORK – Perhaps the Bronx County Courthouse should post a warning: People who get sued here run an increased risk of suffering staggering losses.

Or maybe it doesn't need to put up any signs: Tom Wolfe spread the word in his novel "Bonfire of the Vanities," in which he declared, "The Bronx jury is a vehicle for redistributing the wealth."

Bronx juries, the data show, find the defendant liable in a lopsided 72% of civil cases, compared with a national average of 57%. Damage awards in this New York City borough average \$1.2 million, double those in mostly suburban and affluent Westchester County to the north, according to the New York Jury Verdict Reporter.

But lawyers are learning through research and experience that the Bronx-jury phenomenon isn't unique. Juries in many other urban areas also tend to favor civil plaintiffs and go easy on criminal defendants. Lawyers think such juries identify with people whom they perceive as victims, to the detriment of police, prosecutors and deep-pocket civil defendants.

Factors at Work

It's possible the underlying reason has something to do with race—New York's borough of the Bronx is mostly black and Hispanic—but some observers term income and social class more important. "If it's a poor white plaintiff vs. a wealthy minority defendant, the victim empathy is still there," says Allen H. Isaac, a Manhattan litigator who defends corporations and landlords here.

Paul Bibuld, a lawyer with New York City's Corporation Counsel, which frequently represents the defendant in personal-injury suits in the Bronx, knows the phenomenon firsthand. He recalls defending a case in which the city was sued after an off-duty policeman shot a friend, supposedly while the cop was cleaning his gun. The evidence suggested, however, that the two men had been roughhousing in the cop's apartment when the gun went off. City lawyers determined to their satisfaction that the gun wasn't being cleaned when it fired—ruling out any credible argument that the cop was acting within the scope of his employment and that therefore the city could be held liable.

Convinced it couldn't lose, the city didn't try to settle the case. Mr. Bibuld's boss, Leonard Olarsch, didn't think a judge would even let it go to a jury. In a file folder, he jotted down: "Dismissal case. This cannot be scope of employment." Another attorney, who turned the case over to Mr. Bibuld early last year, told him, "It's an easy case; don't worry about it."

Surprising Award

But last April, a Bronx jury awarded the plaintiff about \$9 million. The trial judge cut the award to \$2.8 million, but the city still took a big hit. The plaintiff's lawyer contends that the verdict and award were justified. The case is under appeal.

Similar results are evident in such cities as Washington, St. Louis, Philadelphia and Chicago. Juries in suburbs of these cities side more often with civil defendants.

In St. Louis, for example, data for 1989 show that plaintiffs won 80% of the verdicts in personal-injury trials in the city but only 48% in the suburbs. The gap was still evident in 1991, but narrower—a 62% plaintiffs' success rate in the city, 53% in the suburbs. Judy A. Riley, managing editor of

Jury Verdict Reporting Service in St. Louis, believes plaintiffs lost ground in the city for three reasons: Gentrification over the past 10 years put more affluent whites on juries, rule changes made it tougher to avoid jury duty, and insurance companies mounted an advertising campaign against high damage awards.

In Chicago's Cook County in the first eight months of last year, juries awarded winning plaintiffs an average of \$675,012, compared with \$194,021 in eight mostly white suburban counties, according to the Chicago Jury Reporter.

Differing Views of Justice

Why the disparities? Lawyers for both plaintiffs and defendants say urban poor and working-class minorities have a different sense of justice than wealthier jurors. To the poor, lawyers contend, the powerful and the affluent seem alien and often inimical, and so such jurors tend to side with plaintiffs, whom they see as fellow victims.

Cynthia Cohen, a research psychologist and jury consultant in Los Angeles, learned how deep the sympathy for plaintiffs can run among African-Americans when she conducted mock civil trials in Philadelphia two years ago. Working for a civil defendant that she declines to name, she gathered 40 blacks and 20 whites to play jurors. After hearing the facts of the personal-injury claim brought by an individual plaintiff, 84% of the blacks said they believed the defendant's story. Yet after questioning the blacks further, she found that 90% would have awarded money to the plaintiff—even though they thought that the defendant wasn't negligent.

Ms. Cohen says two black jurors said corporate defendants should pay even if they do nothing wrong. Two others, she adds, said paying the plaintiff would be good public relations for the company. The defendant read the writing on the wall and settled the case rather than go to trial. Based on her study, Ms. Cohen says, "We can't conclude that all inner-city blacks have this phenomenon. But I think it should be investigated further."

While behavioral scientists conduct such studies, New York lawyers tailor their trial strategies with the urban jury in mind. Mr. Isaac, the civil-case defense lawyer, says one of the keys to winning in the Bronx is to pick jurors "who know the value of a dollar, and when they swear to God to be objective, they really mean it." Such jurors tend to be older religious people, former targets of lawsuits, property owners and people who work with money, such as bookkeepers.

Mr. Isaac says most other Bronx jurors will look you straight in the eye, tell you they can be scrupulously fair and really believe it. "But subconsciously," he says, "they're not fair and objective."

Despite careful jury selection, lawyers for deep-pocket defendants expect to lose often; so they concentrate on preparing the trial record for appeals. Plaintiffs lawyers virtually count on winning. Mr. Bibuld, the lawyer for the city, says some plaintiffs' attorneys button-hole defense lawyers in the courthouse hallways and, seeking leverage to get a hefty settlement, "love to remind you that you're in the Bronx." He adds: "They may even concede that their case is not

too strong. *'But we're in the Bronx.'* they say."

Forum Shopping

The belief that Bronx juries favor plaintiffs is so strong, says Bronx County Judge Hansel McGee, that some accident victims try to claim the borough as a proper place for their suits by moving in with a relative who lives here—a tactic that's clearly fraudulent. Judge McGee adds that some plaintiffs who do live in the Bronx try to stretch the rules by filing suits here even if an accident took place elsewhere. The only recourse for defense attorneys before a personal-injury case goes to trial is to scrutinize the filings to make sure venue is proper. "I get motions on top of motions to change venue," Judge McGee says.

Although the verdict on the behavior of urban juries in civil cases is nearly unanimous, there's some dispute about how far these juries go in giving criminal defendants the benefit of the doubt. Bronx District Attorney Robert Johnson contends that minorities, themselves frequent victims of crime, are tough on defendants. Minority-dominated grand juries, he says, often fail to bring charges against police officers accused of shooting blacks or Hispanics. Mr. Johnson, who is black, says that the news media have focused on the few cases involving members of minority groups in which an acquittal seems shocking and that such cases don't represent a pattern.

However, Mr. Johnson's predecessor, Paul T. Gentile, disagrees. Mr. Gentile, a white who's now in private practice, says that Bronx juries have become skeptical of police testimony and that corroboration from

non-police witnesses has become nearly essential in prosecuting a case. "When I first began in the D.A.'s office 20 years ago, the strongest evidence you could bring was police testimony," Mr. Gentile says. "Now, if the only evidence you can bring is police testimony, it's the weakest case."

Finding a Deeper Story

A Bronx jury generated headlines last summer when it acquitted a defendant whom numerous witnesses had seen pumping two bullets into the back of an unarmed man on the steps of the Bronx County Courthouse—in broad daylight. The jurors seemed to look past the immediate facts to the story behind the shooting: The victim, who survived, had shot and killed the defendant's son, then harassed the defendant for months. The District Attorney's office had failed to revoke his bail despite complaints of harassment.

The shooter in the case at trial, several jurors said in interviews, was the real victim, and they viewed his actions as self-defense even though the legal definition is much narrower than their own. They acquitted, they said, in the interest of justice.

Criminal-defense lawyers defend Bronx juries. They contend most suburban, middle-class jurors, though swearing otherwise, are inclined to believe that a criminal defendant is guilty. But Bronx jurors, defense lawyers argue, truly require prosecutors to prove guilt beyond a reasonable doubt, and they tend to have a distinct—and legitimate—idea of what's reasonable.

"The fact that they will look at police testimony with greater scrutiny makes them more analytical. The more analytical the jury,

the more apt you are to have a fair verdict," says Abraham Abramovsky, a Fordham law school professor.

Plaintiff's lawyers also ask why jurors from more middle-class communities should be applauded just because they are more likely to favor defendants and grant smaller damage awards, perhaps out of fear of rising insurance premiums and property taxes. Such speculation shouldn't affect a calculation of how much an injured party is due, they say.

"I think the awards in Westchester County are unjustifiably low," says Joseph Irom, a plaintiff's attorney. "Bronx is one liberal county," he concedes, "but nobody cares about the reactionary county [Westchester], where you can't win a case."

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