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NEWS & INSIGHTS

JACK SHARMAN AND GABE DOWDELL DISCUSS BATTLING JUROR INTENT ASSUMPTIONS IN LAW360

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Law360 recently **published an expert opinion piece** by Lightfoot, Franklin and White LLC partner **Jack Sharman** and associate **Gabe Dowdell** that dissects a recent study claiming that only one-third of corporate frauds are detected. They also address the unspoken inferences the study makes about how juries and judges view a white-collar defendant's intent culpability — and what attorneys can do to combat these misperceptions in court.

In their article, Sharman and Dowdell argue that the *Review of Accounting Studies* study overestimates the actual pervasiveness of corporate fraud because the authors treated all instances of "alleged fraud that was settled out of court" as actual fraud — even if it involved perfectly legal conduct.

They write, "The study's methodological error is less important than the fact that the error confirms what we and other white collar practitioners have observed: The presumption of innocence, however vigorously relayed by the judge to the jury, has often fluctuated into an assumption of guilt, or at least great skepticism about innocence."

To confront assumption-of-guilt issues, Sharman and Dowdell encourage defense attorneys to leverage detailed pretrial juror questionnaires and pursue more extensive voir dire to confront assumption-of-guilt issues. They advise that defense attorneys should work with judges to use these tools early on to ensure clients receive a complete presumption of innocence.

"Only by using such tools can a practitioner avoid an iceberg before it is too late," Sharman and Dowdell write.

Sharman, who is the head of Lightfoot's **White-Collar Criminal Defense and Corporate Investigations practice group**, is no stranger to high-profile investigations. Notably, Sharman served as Special Counsel to Congress during the Whitewater investigation.

Dowdell counsels clients in commercial litigation, intellectual property, and environmental and toxic torts disputes. He began his practice working on commercial litigation and consumer protection cases for an international law firm, and applies that experience to his practice at Lightfoot.