

How Jurors Make Decisions

By Samuel H. Solomon, CEO



LITIGATION CONSULTING

Lynbrook, NY • New York City • Washington, DC

1-800-875-8705 • Fax 516-823-4400

www.DOAR.com





How Jurors Make Decisions
A Practical and Systematic Approach to
Understanding Jury Behavior

By Samuel H. Solomon

May 2002

DOAR
170 Earle Ave.
Lynbrook, NY 11563

sam@doar.com – 516.823.4040

How Jurors Make Decisions
A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.
www.doar.com -- 1

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior

By Samuel H. Solomon, CEO - DOAR

Overview

It is not uncommon to hear attorneys gripe that a jury “went off” somewhere in their deliberations and ignored the facts, or more accurately the attorney’s reality, in arriving at a decision. We are all fascinated with how an individual juror, within a small group decision-making format, understands the facts in the case and participates in the consensus process. Simply put: how do jurors think and how do they decide?

Seminal research concludesⁱ, as we will see in the following discussion, that a “story model” emerges so “that jurors [will] impose a narrative story organization on trial information”ⁱⁱ. Yet here is the rub and what we need to comprehend: “Because all jurors hear the same evidence and have the same general knowledge about the expected structure of stories, difference in story constructions must arise from differences in world knowledge: that is, *differences in experience and beliefs about the social world*. (Italic ours)”ⁱⁱⁱ Understanding this process helps address problem areas in the case, trial themes, what your witnesses’ testimony focus should be – even graphics content.

This is the intent in using brainstorming and research methods to develop *persuasion theory* as distinct from legal and case theory^{iv} for the express purpose of leading jurors through a defined decision making process. All these persuasive factors come into play in addressing an understanding of why and how jurors decide cases. This paper will explore some of the underlying concepts that drive jury decision making and methods by which an attorney can test and discern these issues and develop a persuasive model for trial. The subtitle of this paper highlights my desire to make this paper a hands-on practical guide with suggestions for immediate action.

We are now in an era of limited voir dire, where judges are resistant to lengthening the jury selection process. There is even a trend to suggest the elimination of preemptory challenges altogether.^v This is shifting the focus of jury research away from jury selection strategies toward achieving a greater understanding of the jury decision making process. Such an understanding allows the litigation team to create arguments and case theory with the *broadest appeal to jurors*.

As de-selecting jurors is less and less of an option, the litigator’s focus needs to be on how one creates a persuasion strategy that attracts and attaches to the belief systems of the greatest number of individual jurors. This understanding only comes from observing surrogate groups of jurors at deliberation. It is assumed in the article, therefore, that some form of focus group or mock trial will be performed in order to derive the research observations described.

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior

Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

The Conceptual Framework

I have had the opportunity to observe hundreds of jury deliberations in civil and criminal matters over a wide range of case subject areas. While it is not the purpose of this paper to delve into the theoretical constructs of social-psychological behavior, a series of general observations about jurors and their decision process can be articulated to facilitate an understanding of the origin of our approach to persuasion strategy.

1. Jurors look at “issues” not “facts”.

The principle behind how people make decisions on an individual basis serves as the foundation for deciding how to develop a case theory that offers the widest possible acceptance among listeners. How people look at the world can best be illustrated by an example: In a contract dispute, there is a difference of opinion in how to interpret the “material breach” part of the agreement. As usual, this term in the contract is vague and the litigants debate whether this breach really occurred and at what “level”. From the juror’s perspective, whether a breach occurred or not is typically overshadowed by “issues” such as: why didn’t the plaintiff make the agreement more explicit; or, whether the lawyers involved in drafting the agreement should be held accountable. Or for that matter, how agreements are drafted in the first place.

These are all issues that result in “rhetorical questions” in the minds of jurors that need to be answered or resolved by the trial lawyer. The alternative is that people will use familiar and personal values-based “frameworks” to understand and decide what is fair and correct. It will be the jurors’ **common sense** that will prevail without the intervention of an attorney’s **Trial Story**. Quite simply, jurors *filter facts via their “values” and “beliefs” on how the world works and translate facts to life experience-based issues*. Closer to home, in your teenage child’s mind it is not the fairness of enforcing a midnight curfew (fact) that concerns them, rather the lack of trust (issue).

Understanding issues as perceived by surrogate jurors is the first step in constructing an acceptable Story for your case. Revealing these issues makes it clear why case themes are so important. They are the overarching Story elements that relate your case facts to the way people relate their personal experiences and value beliefs; forming a reasonable “framework” for understanding the issues in the case. Facts validate a believable Story, as will be described later, but they do not provide the intricate pattern to the Story’s tapestry. Only with a proper understanding of the issues does that pattern emerge.

It is important to keep in mind that some values are very firmly held and others are more transitory, and therefore may be more malleable. Strongly held values typically relate to what are usually called “core” beliefs. These may include perceptions of personal responsibility, fairness in dealing with others, being in

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

control, etc. Non-core beliefs are also significant; however, you may be able to establish that your case is the exception to that commonly held belief. One way to accomplish this is to demonstrate a contrast between your case Story and the non-core belief. A simple example is that people believe that “everyone should get along” but in your specific case the conflict was about “protecting your rights”.

The “issues as opposed to facts” conundrum is explored in a unique way by Steven Covey, author of “Seven Habits of Highly Effective People”, in his concept of paradigms^{vi}, which illustrates how people view the world (similar to values) and how a paradigm can shift one’s perspective by reframing the issue. He describes an actual incident on a NY subway where a father, with a number of unruly children, entered the subway and began to make an enormous ruckus. Covey, in his belief that children should be controlled by their parents, turned to the man and admonished him for permitting his children to disturb Covey and the other passengers. The man replied sadly that the children were returning from their mother’s funeral and he did not have the heart to discipline their behavior, knowing they were acting out their grief. Covey immediately felt empathic and supportive of this man. Covey calls this a shift in the paradigm of seeing the situation (facts) from a different perspective (issues).

From a decision making vantage point, this illustrates that the belief – that parents should discipline their children – is not a core belief and is subject to modification based upon an acceptable “alternative theme or Story”. The children’s grief now provides a new framework for understanding the father’s actions, and all is forgiven. Or is it? Had this been a strongly held belief – that parents should always be in control – then the alternative Story would not work. Or if the case facts were inconsistent with the Story (e.g., the children were not merely misbehaving, but shooting people), then this alternative Story would not be effective unless the listener held the extreme core belief that any behavior was acceptable under the circumstances of the death of one’s mother.

2. Attribution is typically the most important psychological issue at play.

The most important psychology mechanism at play during jury deliberation is what is typically labeled attribution or, more simply put, *who to blame*. There are a number of underlying reasons for the development of attribution. For our purposes, however, there are two typical explanations for this phenomenon. They will shed light on the importance of recognizing and appropriately treating attribution – or ignoring it at one’s own peril.

One explanation, based on traditional psychoanalytical principles, recognizes that when a person faces any new situation “anxiety” is created, which a person will need to resolve in some way. For example, when a person hears that a company’s contract was breached; jurors may resolve their personal anxiety by saying to

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

themselves: “was this to happen to me, I would have done X.” Through this process, the juror is emotionally required to attribute blame to one of the parties.

An alternative explanation is based upon the psychological principle of “locus of control”^{vii}. Essentially, this looks at all people as fitting into a continuum between two classes of character: internal versus external locus of control. With internal locus of control, the juror sees the world as a place where they control the events in their life and expect the same of the litigants, i.e., the litigant should have dealt with the situation, and it is their fault. External locus reflects the view that outside events tend to control one’s life. Individuals embracing external locus of control are inclined to blame the outside or “other” party and not the one to whom they perceive a kinship .

Attributing blame is intuitively a controlling factor during jury deliberations. To maximize the investment in jury simulations, litigators should pay close attention to discussions of value issues and attribution. Of course, one will learn other important information during deliberations, such as order of facts, analogies and reasonable arguments. However, attribution will be obvious when people say: “why didn’t company x have someone else check the contract”; “why didn’t the plaintiff read the label more carefully”; or any statement that attributes some form of blame or responsibility to ANY party. It is important to keep your mind open to potential parties to which attribution could fall. Jurors may feel that a party should have been blamed, even if it is not on the verdict form! Depending upon your client’s position, this confusion may or may not be helpful; however, the real damage for your client’s case is not recognizing the land mine posed by attribution to an unnamed party.

3. Jury leaders typically have some “perceived” subject-matter expertise.

Numerous research projects have been conducted regarding leadership in the jury room and one may turn to these works for an in-depth understanding of the topic. However, two practical observations are worthwhile. First, jurors typically look to fellow jurors with perceived or real subject matter expertise. It may be a trivial relationship (and this happened), such as a juror who worked as a typing clerk in a courthouse! More typically, it will be someone who works in an area that relates to the issue at hand. For example, in a contract case, this person will have an extraordinary influence during deliberations because the subject matter of the case is so foreign to other jurors. One should explore backgrounds, in the contract example, of lawyers, business owners, accountants and address these jurors subtly during the trial, as well as directly approaching the subject matter by presenting your own clear definitions.

A second observation is that weak jurors, even with bad attitudes towards your client’s case, will have little impact on the outcome and a preemptory challenge should not be wasted. We have found that typically a young juror’s opinion will

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

carry little weight in relation to older and more experienced jurors. As with all generalizations, one should be careful, since jury de-selection “rules” will have exceptions based upon an experienced trial lawyer’s common sense given the particular case facts and prospective juror profiles. With that said, we do not waste preemptory challenges on weak, young jurors.

4. Demographics, in general, have little predictive value on jury decision making.

A principle of value-belief based jury de-selection is that demographics have little relationship to how people think and believe^{viii}. For example, the fact that a person is a Caucasian female will have little predictive value as to her feelings towards abortion. An exception to this rule appears to be the impact of long term employment. Employment as a “quick and dirty” de-selection tool is especially important where voir dire is curtailed and employment may be the closest one gets to judging whether someone is conservative versus liberal or discerning ones attitude toward standards or rules. For example, if your contract case requires the defendant to be held accountable to the provisions (read: rules) of the contract, then you would be looking for a “rule-based” type of person and value-belief. Typically, long term employment as police officers, teachers, government workers and military personnel will be indicative of this value.

Although jurors decide cases based upon their values, always keep an open mind when your common sense suggests that a particular demographic will tend to “cluster” a certain value belief. A recent example was the clustering of values around women and their attitude towards a female accused of being promiscuous. One should be careful not to just select or de-select based upon sex alone, since there are many factors that influence how a woman feels about this subject. In this case, women’s opinions ranged from sympathy for the female plaintiff to an aggressive defense perspective. It was obvious, however, that the female demographic did cluster a higher number of subjects who had sympathy. With all things being equal, our defense perspective led us to exclude women unless we detected a unique value-belief to the contrary. In hindsight, the de-selection strategy was correct in mitigating damages.

5. Language has a critical role in understanding juror comprehension.

Trials are about language. Word meaning, language perception and semantics ultimately dictate real understanding during jury deliberations and directly impact the completion of the verdict form! Our research demonstrates that jurors typically do not understand the real meaning of most case related language, and that this problem is magnified where the entire matter is foreign to them. Of course, these same terms are used by attorneys with abandon! The result is confusion, or worse yet, *misguided decision making*.

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

It is not just the words, in many instances, that are unfamiliar. The very nature of the subject area will be misinterpreted. In the contract example, jurors will not typically understand the process by which lawyers and their clients develop a business deal resulting in a contract. Such an understanding may be crucial if you are trying to prove breach, and juror attribution leads them to conclude that you and your “expert” attorney should have known better. Without a foundation in business contracts and corporate negotiations, many jurors will rely upon their life experiences, such as their last house closing! Of course, negotiating a business contract is slightly more complex than a house closing. Business contracts are uniquely crafted to balance business and legal requirements, and though template language may be used, each contract is unique. A house closing, on the other hand, uses a standard form. Words such as “contract” will lead jurors to believe the process is similar and since the contract crafting process was not revealed during the trial, negative attribution occurs and an inappropriate conclusion is reached. Language and its context must be carefully revealed to a jury in verbal and graphical form. There should be no exceptions to this rule.

Semantics also have great relevance in the judge’s instructions and verdict form. The importance of developing strategies to address these decision tools cannot be underestimated. An entire trial may be lost at the final moment of truth when jurors fail to make the connection between your facts and the verdict form as interpreted by typically unintelligible jury instructions. A recent study states: “One dramatic finding was the low level of comprehension and memory for information conveyed in instructions on the law.”^x In fact, this study put the comprehension rate at less than 10%! (NOTE: In a recently published Temple Law Review article on Reverse Engineering the Verdicttm, my co-authors and I describe how graphics can be tailored to specifically address verdict form language issues.^x)

As a general rule, one should pay particular attention during mock trials to how jurors debate and decide upon completing the verdict form. One should learn how the instructions are “interpreted” by jurors and develop methodologies to address these issues. Instructions need to be contextualized within the framework of the story, facts, and issues developed during the case. The actual “burden words” should be woven into the fabric of the arguments and examination of witnesses. Charts that teach the burden and instruction language are essential to a process called “analytical graphics”.^{xi} Six analytical charting techniques – time line, relationship, process, comparison, rating and decision tree – have been identified, and are described in more detail within the Temple Law Review article. These techniques take the language interpretation uncovered during jury research and graphically demonstrate how facts and issues are to be linked to the instructions and burden of proof.

A simple example will suffice. *Clear and convincing* can mean almost anything to anyone. Based upon which side you are on, you need to consider how to use these

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

words to encapsulate your facts and issues. “Clear and convincing,” as words, need to be incorporated into witness examinations and every other aspect of your case. When examining witnesses, rather than asking if they were certain, ask whether they were convinced. Was this clear? Use a chart where this language is embedded into the text. A *rating chart* may have check-off columns of “yes” and “no” for key facts, where the yes/no column is titled: “clear & convincing?” This graphical exercise can be, in many cases, the swing factor in closely contested cases.

6. Order of presentation directly impacts the power of argument

Fascinating research^{xiii} reveals the impact that presentation order has on the juror’s understanding of facts and how issues are perceived. This is due to the fact that people learn by “attaching” subsequent knowledge to prior information; therefore, the *primacy of the initial impression* is very important. Similar to the common sense aphorism that *first impressions count*, we have found that first learning counts! Consider the case, where the defendant’s liability is weaker than the damages, that you may want to “reverse the opening” and lead with the damages. Plaintiffs, being at-bat first, have the upper hand in this arena since they control, through careful manipulation of order, the context of the entire case. A carefully crafted order during opening can create a mold into which all future facts are organized and understood. In the contract breach case, this technique may be used by plaintiffs to control contract liability by being the first to explain how businesses negotiate a contract. In this example, one would be combining a teaching experience with a specific order that “molds” people’s perceptions.

Understanding results from jury research takes time, and requires the knowledge accumulated from the actual experience of observing repeated deliberations. Similar to an appreciation architecture or artwork, one’s “eye” improves with practice, and interpretive details emerge. Sometimes research results may not be clear, and repeating the exercise may be critical to obtaining an accurate depiction of the problems and solutions in the case. This may be due to ambiguous responses, problems with the research design, or – and this is a constant struggle as one budgets time and dollars –the “sample” size. In other words, the greater the number of people tested, the more reliable the outcome or analysis of results. Sample size increases predictability, and it is generally believed that as the sample size reaches 50 jurors or more, coherent patterns tend to emerge and repeat themselves with a distribution that is more predictable.

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

Practical Solutions

What strategies may be employed to resolve problems encountered during the research exercise using our conceptual framework? A strategy – a purposeful direction – evolves from an understanding of one’s goals. By analogy, in asking someone what road to take in an unfamiliar area – even if you an expert driver – the response would invariably be *where are you going?* It would be difficult to offer directions without that knowledge. The same applies to each stage of trial preparation. The goal of success, in this case, is the proper completion of the verdict form, to be resolved in your client’s favor. Understanding how the verdict form is perceived, the language used, and the psychological mechanisms at play are inherent in this goal. Social-psychological experimentation, like its sister discipline market research, offer us the insights and methodology to determine these directions. Common sense is surely critical – and some seasoned attorneys can proceed on instinct alone – *but why not ask for directions?* Is it worth the cost of being wrong? And worse yet, being wrong without knowing that there might have been a better way or more effective path? These are the questions that we seek to understand in this inexact, though extremely useful quest for what really makes people think and decide. Let’s explore some of these more common “direction” approaches one may use once the psychological parameters are understood.

1. Framing issues.

This is probably the most valuable and instructive insight that emerges from understanding value-beliefs and attitudes. Steven Covey’s story illustrated that most people view facts within a specific framework. Trying to convince someone that the framework is fundamentally misguided is futile. It is better to create, based upon the value-beliefs that are in opposition to your case, a frame of reference or paradigm that will provide a sensible alternative Story that will explain for those people how this situation is different and, in fact, it would not be inconsistent with their other held beliefs...or better yet, how this case or Story actually fits within their existing *frame of reference*. (NOTE: Framing has been deeply explored in the jury research literature. An excellent book on this subject as well as many issues in the field of jury psychology was recently authored by Prof. Neal Feigenson.^{xiii})

Clearly, this is not an easy task (especially for more complex cases), and it is only through careful experimentation and testing that one will find an alternative frame or reengineered Story to fit within an existing frame of reference. Experience has shown that a just cause or case always has an acceptable frame of reference if one works hard enough to find it. In fact, the converse appears to be true as well: that a truly unsupportable or unjust case typically cannot present a credible frame. Some people call this as passing the taste or smell “test”. This is not saying a case has to be *true* to have a frame, only *just!* It is one of the more potentially manipulative quirks of effective social-psychological analysis.

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

It is also possible that a number of frames exist for a single case. One frame could relate to an industry Story and another to the unique circumstance of your client. In each circumstance, fairness and reasonableness must prevail; otherwise, jurors will reject the frame as inconceivable. Some cases naturally evolve a frame, such as the scenario where a contract is framed as really being about keeping one's promise, and where your client needed to decide between personal survival and that promise. This may be a frame to explain the situation where breaking a promise may be appropriate.

Framing is as much art as science, and it is both a process of perspiration and inspiration. Frames also come from casual conversations with regular people on the train, at a social function, or at church. This can be an interesting exercise, as it requires one to observe human nature in testing and revisiting these ideas with people in all walks of life.

2. Inoculate the jury.

A corollary to framing is the need to own the weaknesses in your case. This is at the wellspring of credibility since Americans; in general, want to see that people deal “honestly” with their problems. There is a very strong and closely held value-belief in America that one admits their mistakes. Not all cultures adhere to this value system; some instead view “*mea culpa*” as an improper expression of weakness. Americans, however, want to see litigants own-up to their problems, with the key being how to frame this problem area in the most understandable way.

Deliberations will highlight the least attractive parts of your case, and you need to use the research to understand both what they are and the most reasonable way to “accept them and move on”. There is nothing more damaging to one's credibility than ignoring the obvious or denying the inevitable. This does not mean that you concede liability. Rather, the framing of weaknesses should be woven into the overall Story of your client's justification.

In a recent example, we realized that the frame of why we ignored the contract language was tied to our case's essential psychological weakness – how we allowed the negotiations to slip in the first place. To solve this problem, we added to the Story how business contracts are negotiated by companies and their lawyers and why certain issues remain ambiguous. Additionally, a “decision tree” graphic was used to visually explain the trade-offs encountered in negotiating the contract. One should test, however, to make sure that what an attorney *perceives* as a problem is really the *psychological weakness* as well. Often, these two perceptions may be altogether different.

One last thought on *owning your weakness* harkens back to our sixth observation regarding order of presentation. Typically, your weaknesses are best packaged in

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

the *middle* of your opening or case in chief. Studies demonstrate that when approached in this fashion, people perceive your honesty yet do not remember the details of your confession! In the way the beginning (primacy) and ending (recency) of your presentation is left for your strongest facts and argument.

3. Arguing the rhetorical questions.

One of the most amazing insights from a mock trial is learning what questions are left unanswered by case presentations. These become the “nagging doubts” that lead deliberations in a completely unexpected direction. You will typically hear jurors say: Why didn’t X happen? And the X was never really covered by the attorney. Those “rhetorical questions” in the minds of jurors are wonderful “gifts” to anticipate and answer in both oral and visual presentations. They connect you to the jurors, and give the perception that you were really “listening” to their hearts. More important, it prevents the jury from diverting to unproductive deliberations where they will answer these questions without your guidance, relying instead on their value-beliefs. This can lead to very different conclusions.

4. Provide a Story that fits a “common sense” view of the facts.

Great trial lawyers know that a good case needs a great story and that great stories inspire a pursuit by your jurors for justice. Your Story, however, must balance your themes with the common sense experience of most people. The Story Model refers to the following *certainty principle*: “An evaluation of goodness-of-fit between the story and the best-fitting verdict category is based on the extent to which the story includes instantiations of elements of the category.”^{xiv} Simply put, *the Story that fits the facts best within the widest range of value-beliefs will carry the day.*

Often, one may want to test alternative stories and then refine the organization of that Story in order to create the most attractive fit within the core fact set and the “best-fitting verdict category.” In a recent case, we could not find a single Story that would explain management’s ignorance regarding a series of criminal acts happening within their organization. Based upon this repeated testing, we urged that the clients plead and not take this case to trial.

5. Analogies and metaphors.

A powerful tool in an advocate’s story telling arsenal is the use of analogies and metaphors. Analogies address how one issue is similar to another issue. For example, negotiating between parties on this contract was like getting agreement at a large family dinner – it was all about compromise. A metaphor is a direct comparison using symbolic language; for example, the clauses should have been a “red flag” to management.

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

Both of these approaches work because they are easily visualized expressions of the concept and allow people to understand and “see” the frame you have created. The danger with analogies and metaphors is that they may be reversed by the other side. Focus group participants will typically offer analogies during their deliberations that will relate to their employment or other life experiences. One should use jury research to test analogies and metaphors you are considering. “Powerful Persuasion” by Howard Nations includes an in-depth discussion of various rhetorical devices.^{xv}

6. Graphics.

Communicating the Story takes on many forms. The verbal form, delivered by the attorney and witnesses, is at the foundation of the message. Visual rhetoric provides a visceral, directly subconscious connection to the jury that needs to be synchronized with the research and case development that’s been described. (I have developed this notion in great detail in the Temple Law Review article footnoted in this paper.) Suffice it to say that every component that’s been covered, from imbedding language to thematic story telling, has an analogue in what’s referred to as *analytical graphics*. This takes graphics beyond the “what and how” to the “why,” and provides a visual reframing of the jurors’ thought process.

Conclusion

The study of human behavior as it relates to decision making in small groups is fascinating and exciting. As a trial lawyer, these observations become an important part of how one formulates an effective persuasion strategy. This paper has only briefly touched upon the central concepts and methods my colleagues and I use as part of our research “philosophy”. As with any intellectual discipline, the approach a consultant takes in a matter depends upon one’s “philosophy” and methodology for research and analysis, such as the one described above. The impact of a well-honed jury research study illuminates every aspect of the trial process – from the earliest moments of discovery and witness depositions to when an attorney delivers the impassioned closing argument.

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

About the Author

Samuel H. Solomon, with over 20 years experience in the legal, financial and information technology industries is a CEO, legal strategist, and prominent speaker. His command of the intricacies of trial strategy, visual persuasion and courtroom presentation technology have led to the formation of DOAR. Founded in 1989, DOAR offers litigation and trial support services and courtroom technology to more than 3,000 clients nationwide. Sam's unique perspective, eclectic education and varied background make him a much sought-after speaker and consultant. His most recent presentations have covered Trial Presentation Strategy, Courtroom Communication, Jury Psychology, and The Impact of the Internet on the American Justice System. He recently co-authored "*What Juries Want to Hear II: Reverse Engineering the Verdict*" in The Temple Law Review. In March of 2000, Sam co-authored *PowerPoint for Litigators*, the seminal work on the presentation of evidence using technology, published by NITA Press. He is an instructor in the LLM Advocacy program at Temple University Law School and the Hanley Advanced Advocacy Program for NITA. He may be reached at sam@doar.com.

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.

-
- ⁱ N. Pennington & R. Hastie, “A Cognitive Theory of Juror Decision Making: The Story Model”, *Cordozo Law Review*, 1991, Vol. 13, 519:557.
- ⁱⁱ *Ibid*, Page 521
- ⁱⁱⁱ *Ibid*, Page 525
- ^{iv} S. Bocchino, S. Solomon, “What Jurors Want to Hear: Methods for Developing Persuasive Case Theory”, *Tennessee Law Review*, Spring 2000, Vol. 67 No. 3, Pages 543-568.
- ^v Felice Banker, Note, *Eliminating a Safe Haven for Discrimination: Why New York Must Ban Peremptory Challenges from Jury Selection*, 3 *Journal of Law & Policy* 605 (1995)..
- ^{vi} S. Covey, “The 7 Habits of Highly Effective People”, Simon and Schuster, NY.
- ^{vii} There is extensive online literature covering Locus of Control. I suggest a Google search for this term as a good place to start.
- ^{viii} R. Hastie, D. Schkade & J. Payne, “A Study of Juror and Jury Judgments in Civil Cases: Deciding Liability for Punitive Damages”, *Law and Human Behavior*, Vol. 22 No. 3, 1988 Page 305.
- ^{ix} *Ibid*. Page 304.
- ^x S. Bocchino, J. Dobson, S. Solomon, “What Jurors Want to Hear II: Reverse Engineering the Verdict”, *Temple Law Review*, Spring 2001, Vol. 74 No. 1. Pages 177-230.
- ^{xi} Analytical graphics is described in detail in the *Temple Law Review* article cited above.
- ^{xii} D. Wenner & G. Cusimano, “Combating Juror Bias”, *Trial Magazine*, June 2000.
- ^{xiii} N. Feigenson, “Legal Blame: How Jurors Think and Talk about Accident”, APA Press, Washington, DC, 2000. Framing is covered on pages 120 forward. The subject index on page 291 will cover many of the topics in this paper.
- ^{xiv} N. Pennington & R. Hastie, “A Cognitive Theory of Juror Decision Making: The Story Model”, Page 531.
- ^{xv} H. Nations, “Powerful Persuasion”, www.howardnations.com/publications.html.

How Jurors Make Decisions

A Practical and Systematic Approach to Understanding Jury Behavior
Samuel H. Solomon © 2002 Copyright DOAR. All rights reserved.