JuryThink™

The Social Psychology of Group Deliberation

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ABSTRACT

In the past two decades, the field of **jury research** has demonstrated that individuals serving on juries are especially susceptible to the powerful currents of group influence. In this paper, we will examine the tendency of jurors to subordinate their own -- presumably unique -- opinions as they work toward a unanimous verdict. In short, individuals serving on juries become susceptible to a form of group influence we have coined ***JuryThink™***. Without an understanding of ***JuryThink,*** litigating attorneys are rolling the dice against powerful forces they may be unprepared to control. The good news is that jury research, if done with methodological rigor, can uncover how ***JuryThink*** operates in particular cases.

Introduction: Understanding Individualism

As Americans, we have long felt that one of the defining characteristics of our culture is our rugged individualism. With roots going back to the early colonists in New England, American self-reliance expresses itself both in our publicly stated policies to remain free of what George Washington called "entangling" alliances and in our collective fantasies in which film stars such as John Wayne and Gary Cooper are celebrated for their willingness to "go it alone" outside the influence of the community.

In a poll conducted by the Pew Research Center in 2002, 65 percent of Americans reported that they believe success in life depends on forces within their individual control. In Germany only 32 percent of respondents felt this way, while in India, less than 20 percent of those polled felt that they controlled their own destiny. While it is true that many Americans have significant opportunities for individual advancement, we might ask if this picture of ourselves as free and autonomous individuals is an accurate description of how we actually think and behave. This issue becomes significant when we consider the impact of how individuals engage in decision making within a group setting.

As jury consultants, we are intimately aware of how even those people most committed to their individual points of view are affected by the power of the group. When sitting in a room with up to a dozen other people, it is very difficult not to be affected by the opinion of your peers, even if you remain unaware of the subtle influence of the group (some have argued that social influence achieves its most potent form when it operates below the radar of conscious awareness). For years, we have watched how the opinions of even those individuals doggedly committed to their opinions have their ideas ground down as they are subjected to the powerful forces of group deliberation. The much-vaunted American individualism turns out to be a rather weak force in the face of the collective power of the jury. How does this group influence operate and what situational forces could be powerful enough to bring to heel individuals whose opinions seem so settled when the deliberation began? To understand the powerful forces that operate in jury deliberations, we must turn to the research tradition that takes seriously the extraordinary power of interpersonal influence.

From Groupthink to *JuryThink*

In Groupthink, Irving Janis's classic work on group dynamics first published in 1972, the author argues that individuals brought together to make decisions tend to act in ways that cannot be predicted from their prior beliefs and attitudes. Janis notes that individuals in groups tend to suppress their more idiosyncratic beliefs in the interest of achieving group consensus. Those whose opinions start out in conflict with that of the majority are put under various forms of social pressure – from subtle to blatant – to bring their opinions into line with the dominant thinking of the group. In some interesting cases, individuals with ideas in conflict with the majority can sometimes persuade the majority to "flip," thereby creating a new center of gravity to which the others feel compelled to conform. While not the norm, this shift does occur in cases in which the evidence is less than fully convincing and the jurors' commitment to their positions is shallow.

For Janis, the idea of the individual as a distinct and autonomous being (and therefore free of the pressures of the social group), begins to dissolve under the sway of forces that in the 19th century used to be called the "group mind." In many areas of social life (when we are with friends, with family, at work, etc.), individuals seem to sacrifice (often unknowingly) their independent judgment in the interest of the maintaining "good relations" (or what social psychologists call group cohesiveness or solidarity). That is, when we are with others, there are strong norms that encourage us to moderate our idiosyncratic beliefs in the interest of group harmony.

While the old conception of a supra-individual “group mind” has not survived the test of scientific scrutiny, the powerful psychological forces that Janis identified under the label of “groupthink” are real and operate in some of the most important arenas of social life, including the one institution established by society where we are empowered to judge our fellow citizens: the jury trial.

Individualistic Approaches to the Study of Jury Decision Making

Largely oblivious to Janis’s findings, the research on decision making within juries has long suffered from an overemphasis on the individual level of analysis at the expense of group processes. The oldest model of jury decision making is J.H. Davis’s *Social Decision Scheme* (SDS) in which it is proposed that the final group verdict can be explained by means of a mathematical formula that simply sums up the decisions of individual jurors prior to deliberation. In order to make his model work mathematically, Davis had to assume that jurors would not change their opinion during the course of the deliberations, an assumption that many critics rightly found too limiting for understanding actual jury behavior.

Later models, such as N.H. Anderson’s *Information Integration Theory* or that of Jo-Ellan Dimitrius’s intuitional model of juror assessment discussed in her 1998 book, Reading People, while less dependent on limiting mathematical assumptions, still suffer from an exclusive focus on individual level phenomena. Dimitrius claims to be able to “read” individuals through the use of intuitional skills, but sidesteps altogether actual group deliberations. It seems that few researchers are willing to take on juries in their full complexity as actively functioning groups, yet in their failure to do so, these researchers miss how jury deliberations involve an almost roller-coaster ride of haphazard recollection, emotional turmoil, rational deliberation and eventual compromise as the group lurches toward a legally mandated unanimous decision (or, in those cases in which the center does not hold, a hung jury).

In the place of the above individualistic models of jury decision making we would like to propose a more nuanced conception of jury deliberations that attempts to do for jury behavior what Janis did for policy making behavior. ***JuryThink*** refers to the social psychological group dynamics that draw the individual juror out of him or her self into the broader currents of group decision-making. We will spend the rest of the article outlining how this new conception of deliberation operates within juries and how an understanding of this behavior can lead to more efficacious attorney-juror communication.

The Dynamics of *JuryThink*

What happens when jurors, after days, weeks or even months of trial testimony and argument, finally come to the deliberation phase of the legal process? Although the experience varies with the type of case, in our own specialty area, complex commercial litigation, the overwhelming experience of jurors is a sense of relief that the swirl of conflicting facts and testimony (and lawyerly posturing) is finally at an end. As the trial unfolds, each juror tries to make sense of the arguments presented by constructing a story or narrative (or drawing on a narrative already constructed for him/her by the attorneys) that makes sense of the facts as he/she understands them.

In a recent case we studied, the plaintiff's story, while hardly compelling in strictly legal terms, was simple, easy to understand and much less cognitively demanding than the defendant's more complex and fact-laden story. When the jurors retired to deliberate, they collectively attempted to work out which of the two stories presented to them was the more convincing. One juror recalled a piece of the evidence that had confused him during argument. Other jurors weighed in on the issue, clarifying how that fact piece fit into the story as they understood it. Then another juror, whose memory had been jogged by the exchange, brought up a point of fact she could not make sense of within the framework of the story that had just been discussed. The back and forth discussion continued in this fashion for some time. As it unfolded, it became very clear that the plaintiff's more simple narrative was the one that resonated with the jurors, and thus was the story that finally carried the day. It seemed that the defendant's more technical case, while legally and factually sound, was unable to achieve a critical mass with the jurors. Why?

In the above case, as in many others like it, individual jurors are often confused by the testimony and are desperate for some sense of coherence or meaning. They turn to others in the jury for information and reassurance of the working story they had internalized during the trial. The group then becomes a reservoir for ideas and interpretations to which the entire group can contribute and draw from. Before long, a collective narrative or story emerges that starts to gather together all the facts of the case in a way that makes sense to the collective. At that point, the deliberations become larger than any one individual, no matter how persuasive that one individual may be, as he or she must ultimately deal with the narrative reservoir as it has been constituted by the group. And with this new collective reality, we are out of the realm of individual thought and into the realm of ***JuryThink***.

In the thick of ***JuryThink***, individuals, while still individuals in some physical sense, are no longer free to say anything they want, as “deviant” contributions are quickly countered and either rejected or assimilated into the dominant narrative. Individuals who insist on clinging onto narrative-discrepant facts or counter-narratives are subject to increasing forms of pressure to abandon their position. While some lone wolves try to hold out, most mortals eventually relent as the criticism, ostracism and the potential for exclusion is far too painful an experience for most mere mortals (the Amish practice of shunning is a clear case of using the power of the group to bring the wayward into line).

Lessons for Litigation

Developments in jury research suggest that there are some important lessons that can be used to craft legal strategy.

1. Litigators should be aware that jury selection, while important, is not the only arrow they have in their quiver. The simple fact is that in many venues, voir dire is severely limited, which leaves attorneys with little knowledge about the pre-existing attitudes of the jurors actually hearing the case. In addition, to focus on individual juror characteristics (as is the practice of many jury consultants), in our view, is shortsighted. Indeed, in many instances individual juror attitudes are not always predictive of actual behavior during deliberation. Decades of research attempting to use personality characteristics to predict situation-specific behaviors (such as jury deliberation behavior) have largely failed due to the power of what we have called **J*uryThink***. Jury deliberations are powerful collective situations where no man or woman is an island and where one is forced to respond to the arguments of others. Knowledge of the attitudes and predispositions brought by individual jurors to the trial, while useful for de-selecting obviously problematic jurors, may be less useful in understanding how jurors will vote collectively at the end of the day.
2. Having said the above, insofar as the venue allows for voir dire, questions should be asked that identify leadership or dominance characteristics of people in order to determine who will likely attempt to asset “control” over their peers. While it is the rare among us who can convince a half-dozen or more peers to flip their thinking completely, there are people who possess an almost animal sense of the mood of the group and who use this to sway the group toward their preferred position.

3. In the legal realm, the equivalent to location, location, location would be: story, story, story. Jurors need to understand how all the pieces of the puzzle fit together, in short, how they all fit together as a coherent story. The jurors who have been able to make sense of the case as a story are able to help the other jurors who are uncertain or confused as to the contours of the case. If well-constructed by the attorney, their story not only provides a framework within which to place the evidence, it also provides answers to any questions the jurors will generate.
4. Using focus groups and mock trials, we have studied how jurors collectively make sense of the case as it has been presented by the attorneys. If there is one "law" of jury consulting, it would have to be that until you've actually tried your case in front of a jury (or a simulated jury), you really have no idea how it will actually be heard and accepted by members of the group. Even seasoned attorneys express astonishment when they attend focus groups and, standing behind a one-way mirror, watch ***JuryThink*** at work. Even the most exquisite legal arguments can be construed by mock juries in ways no one had anticipated. This type of jury research is actual empirical research: we cannot be 100% certain of how an argument will fly until we actually test it in front of a panel of jurors.
5. If it is necessary to monitor how the actual case is unfolding at trial, it may be advisable to run shadow juries in order to make sure the pre-tested arguments are coming through as planned. They've proven to be an invaluable source of real time data. For more information on shadow juries please contact me at jdobson@doar.com.

Author Biographies

Steven Lybrand Ph.D.
Steven Lybrand is a member of DOAR's Jury Research and Analytical Graphics division and is a specialist in jury research and litigation strategy. Dr. Lybrand specializes in the social psychology of jury decision making and in the interpretation of complex legal information. Dr. Lybrand, formerly the Director of Criminal Justice and a tenured professor of sociology at the University of St. Thomas in St. Paul, Minnesota, has co-authored several publications including "Symbolic Racism in Candidate Evaluation: An Experiment." Political Behavior, Volume 12, No. 4: pp 385-402 and "Synthesis of phosphatidylethanol-a potential marker for adult males at risk for alcoholism." Proceedings of the National Academy of Sciences, Vol. 85, pp. 9778-9782. Dr. Lybrand is also an award-winning documentary filmmaker and producer whose films have aired on PBS.

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James Dobson

As Director of Research & Analytical Graphics, Mr. Dobson oversees both the jury research and trial graphics teams involved in the design and implementation of courtroom presentations. In support of DOAR clients, he has personally developed extensive research designs and reports in a wide range of both civil and criminal cases dealing with highly complex issues. Mr. Dobson's skilled methods in focus group facilitation uncover the underlying perceptions, attitudes, and beliefs that are critically important in understanding how the modern juror assesses arguments. In addition, Jim oversees a group of highly specialized litigation artist who craft persuasive trial graphics based on jury research findings. Jim is a much sought after speaker and consultant in the area of graphic design as it relates to juror perceptions. Jim is a co-author of *"What Juries Want to Hear II: Reverse Engineering the Verdict,"* published in the Temple University Law Review.

Jim has a BA in Human Relations, a MA in Sociology and is currently writing his Ph.D. dissertation entitled *"Exorcism and Criminally Deviant Behavior in Contemporary America: media reaction and criminal justice decisions in five high-profile cases"* at Fordham University. He can be reached at jdobson@doar.com.

Samuel H. Solomon

Samuel H. Solomon, with over 30 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. During the past 5 years, his scope has broadened to include issues facing firms in document and electronic discovery. Founded in 1989, DOAR offers litigation and trial support services to law firms and systems integration technology to courts and corporations representing 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, Electronic Evidence and Discovery and The Impact of Information Technology on the American Justice System. He recently co-authored *"What Juries Want to Hear II: Reverse Engineering the Verdic*t" in The Temple Law Review and *PowerPoint for Litigators,* the seminal work on the presentation of evidence using technology, published by NITA Press. In 2002, he contributed to two critically acclaimed works: *Handbook on Courtroom Technology – A Lawyers Guide* and *A Judges Guide* by NITA Press. He is an instructor in the LLM Advocacy program at Temple University Law School, the Hanley Advanced Advocacy Program for NITA and and spoken for the New York State Bar Association. Sam can be reached at sam@doar.com.