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The Journey vs. The Destination: Analyzing Jury Deliberation Styles

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The role of juries in adjudicating cases has long been the subject of consternation and debate by those in the legal system. In civil jury trials, the jury acts as the fact-finder and must determine the proper level of liability (and where applicable, damages) to assign the defendant. Much psychological research has focused on how to craft trial procedures to assist juries with this complex task. For example, providing juries with both preliminary and final jury instructions has been found to improve decision-making processes and trial outcomes by giving jurors a cognitive framework to assess the evidence presented at trial. Other studies have observed that simplifying jury instructions, as well as allowing jurors to take notes and ask questions, can improve both juror comprehension and satisfaction. But how do jurors come to a verdict once they are sent to deliberate?

“Deliberation style” refers to the method jurors use to reach a verdict. In the American justice system, jurors are assumed to pay complete attention, consider only admitted evidence, and reserve judgment until they have carefully weighed all conflicting facts. In practice, however, research has found juries will use either a verdict-driven or evidence-driven approach to deliberation. In the verdict-driven approach, jurors take an initial vote and then work backwards to identify the most acceptable verdict option. Evidence-driven juries, on the other hand, focus on evaluating the evidence to determine the “real” story, and may only formalize their evaluation with a vote at the end of the deliberation process. While the evidence-driven approach more closely conforms with the “ideal” jury deliberation process, research suggests that juries may use a verdict-driven approach in up to 50% of cases.

Whether jurors use a verdict-driven or evidence-driven approach may turn on several different factors. One such factor is the number of jurors required to render a verdict. Juries not required to be unanimous tend to be more verdict-driven, stop deliberating when a quorum is reached and may give less attention to minority arguments. Where unanimity is required, juries are likely to spend more time thoroughly evaluating the evidence, and report being more satisfied and confident that they reached the correct verdict. Other factors influencing which deliberation style is used may include the length and relative complexity of the trial. In longer trials, jurors tend to deliberate longer before taking an initial vote, suggesting the heavier evidentiary burden of such cases influences jurors to embrace a more evidence-driven approach.

Notably, research suggests the strongest indicator of how a jury will rule is the distribution of the jurors' pre-deliberation verdict preferences—in approximately 90% of trials, the majority position ultimately becomes the jury verdict. However, minority jurors tend to change their view only when convinced of the correctness of the majority position, rather than succumb to majority pressure. An evidence-driven approach may help minority jurors find other jury members who agree with their viewpoints and facilitate a more balanced and robust discussion. In contrast, a verdict-driven approach is likely to lead to the formation of dissenting groups, which may hinder open debate.

These findings suggest that it may be prudent to request an instruction advising jurors to adopt an evidence-based deliberation style before making a final decision. Model jury instructions from various jurisdictions provide a helpful guide in crafting such an instruction. For example, Instruction 3.1 in the Manual of Model Civil Jury Instructions for the District Courts of the Ninth Circuit includes an admonition to decide only after full consideration and discussion or the evidence as part of the jury's "duty to deliberate":

3.1 Duty to Deliberate

Before you begin your deliberations, elect one member of the jury as your presiding juror. The presiding juror will preside over the deliberations and serve as the spokesperson for the jury in court.

You shall diligently strive to reach agreement with all of the other jurors if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to their views.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not be unwilling to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or change an honest belief about the weight and effect of the evidence simply to reach a verdict.

In addition to requesting a jury instruction, practitioners can also empower jurors to feel confident about adopting an evidence-based approach by providing cues throughout the trial. Such signals could include:

- Suggestions to take notes;
- Contemporaneous reminders to write down testimony they wish to discuss with other jurors;
- Clearly displaying or stating relevant exhibit numbers in jury addresses and witness examinations; and
- Asking jurors to consider all the evidence before rendering a verdict during closing arguments.

While it is impossible to know how a jury will ultimately chose to deliberate, by taking these steps trial attorneys can help create a cognitive framework that invites jurors to more thoroughly engage with the evidence presented and avoid some of the pitfalls associated with verdict-based deliberations.

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