

March 2009 Jury Tip: “Rule-followers and Fairness-focused Jurors”

January’s jury tip dealt with how jurors feel about self-interest and how trials are won and lost based on your jurors’ values, and not necessarily the evidence. This month, let’s discuss another spectrum of juror values that shapes juror decision-making in nearly every case: the difference between rule-focused and fairness-focused jurors.

As I mentioned, when you peel back the evidence and go beneath the surface of juror decision-making, trials are battles between competing systems of values. Jurors don’t care what the evidence shows, because they will dismiss that evidence if it doesn’t fit into what they already believe and what they value. Your success at trial usually hinges on how well you understand your jurors’ values and how well you present your evidence to match those values.

Almost every trial boils down to how jurors feel about obligations and responsibility; should people and companies be bound by contracts and promises or should they be bound by the rules of fairness?

Time and again, I’ve seen mock jurors in deliberations argue over a verdict even when they AGREE on what the defendant or plaintiff actually did. These fights are never truly about the facts and the evidence, but rather disagreements over the definition of ‘the right thing to do.’ Just like plaintiffs and defendants, jurors argue over obligations. Listen closely and you’ll find that arguments over ‘the right thing to do’ in any given situation have everything to do with your juror’s values and nothing to do with the evidence presented in trial.

I can’t count the number of times I’ve seen mock jurors argue over the meaning of a contract when they’re really arguing about fairness and responsibility. Without exaggeration, some jurors might demand that a defendant hand over their first-born to a plaintiff if a signed contract said so in writing. “When you sign your name, you have to live up to your promise, no matter what,” they argue. Other jurors have no qualms demanding that a plaintiff deserves the rights to a patent he or she developed on behalf of an employer, even if a signed employment contract clearly bestows all intellectual property developed by that employee to the employer. “He came up with the idea, he did all the work, so he DESERVES all the credit and the profits,” they insist.

In my experience, how rules-oriented or fairness-oriented a juror is will usually be the most telling sign of how a juror will make value judgments when evaluating what the litigants were OBLIGATED to do in any given situation.

Rule-following jurors see the world in black and white terms and are uncomfortable dealing with judgment and discretion. In any ambiguous situation, their overriding instinct is to frantically search for a set of rules, policies, or procedures with which to judge the litigants' actions. In dozens of mock trials, I have seen hyper-rule-following jurors put so much faith in rules that they will knowingly side with a defendant who has followed procedure EVEN when the jurors admit that the procedures are dangerous and/or wrong and even when the jurors admit that the corporate defendant created their own policies. Rule-followers will refuse to decide right and wrong using their own judgment or concepts of fairness and practicality.

On the other hand, fairness-focused jurors have a practical outlook toward the world and prefer to evaluate situations with discretion. They don't look to rules or authority figures to tell them the difference between right and wrong; instead, they rely on their own judgment to determine what seems right.

A rule-following juror will usually hold a person or company accountable to the minimum required rules, while a fairness-focused juror will demand that a litigant go above and beyond the minimum requirements if the ethics and morality of the situation demand more. Rule-followers tend to hold litigants to the written terms of a contract and nothing more, while fairness-focused jurors will likely reinterpret the contract to conform to their version of fairness. In car crashes, rule-followers tend to blame the driver who violated a rule of the road, but fairness-focused jurors often assign blame to any driver who had an opportunity to avoid the accident, even if that driver didn't violate any specific rules of the road. In product liability trials, rule-followers tend to hold manufacturers to no more than their own policies and the minimum government safety standards, while fairness-focused jurors often demand that manufacturers be held to higher standards defined by their own definition of safety and care.

During voir dire, distinguish between rule-following and fairness-focused jurors by asking your jurors about their approach to similar situations, what they believe their obligations to be, and how they assign blame. Because not every case involves situations in which most jurors have experience, you may have to be creative in thinking of parallel situations to discuss in voir dire that give the same insight into your jurors' likely approach to your case. In any situation, do your jurors look to specific rules for guidance, or do they use their own discretion to make decisions and judge right from wrong? Can your jurors fault someone who has followed all of the rules, or would they expect someone to go out of their way to be helpful?

Before your next trial, take an honest look at more than just your evidence. Think about the values beneath the surface of your case. Are you minimizing your client's obligation or demanding extra consideration from the opposing party? Are the obligations you want the jury to impose on the litigants clear and in writing, or are the obligations implied rules of fairness, decency, and common sense? Decide for yourself if you'd be better off with jurors who focus on just the minimum requirements or on idealistic notions of justice and fairness, and understand the values of every juror on your panel so that you can tailor your arguments to match what they already believe—and avoid making arguments that your jurors will never agree with.

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