

## Do Conservatives and Liberals Punish Differently?

by Bryan Koenig

Like lab rats hunger for food, people who judge a moral wrongdoing may hunger for the wrongdoer's punishment. Neuro-imaging research even confirms that anticipation of a wrongdoer's punishment activates a "pleasure center" of the brain (de Quervain, et al., 2004). Simply put, people are driven by *punitive motivation*. Also like a lab rat that has eaten its fill, many people enjoy *punitive satisfaction* from learning that a wrongdoer has been sufficiently punished (Singer, et al., 2006). Ongoing psychological research shows that the desire to punish a wrongdoer is reduced when a wrongdoer is punished. Perhaps most importantly, the moral emotions of punitive motivation and punitive satisfaction may differ for people with liberal and conservative world views.



Punitive motivation and punitive satisfaction are particularly important in the courtroom. Punitive motivation is triggered by the perception that someone has violated a moral value and results in the desire to punish the wrongdoer. For example, you would probably think that a thief who stole your neighbor's plasma TV should be fined or jailed. Punitive satisfaction is triggered when the wrongdoer has been sufficiently punished, extinguishing punitive motivation. You might be satisfied if the thief were fined \$1000 and spent a week in jail.

The perception that someone has violated a moral value triggers

moral emotions, and research on moral judgments around the world suggests that violations of five moral values – harm, fairness, loyalty, authority, and purity – activate moral emotions in people with a conservative worldview. In contrast, violations of only two of these moral values – harm and fairness – activate moral emotions in people with a liberal worldview. This article explains moral emotions and suggests how you can use knowledge of differences in the moral-emotional systems of liberals and conservatives in the courtroom. But first, you should know why understanding emotions in the courtroom is critical for you.

### Moral emotions precede moral reasoning

Judges and jurors should make decisions about topics such as convictions and sentencing based upon logical application of legal rules to a given case. Psychological research, however, shows that emotions can, and often do, overrule reason in moral judgments.

In a laboratory study conducted by Jonathan Haidt, college students morally condemned such acts as adult siblings having consensual sex (having taken *all* possible precautions) before Haidt played devil’s advocate (Haidt, 2001). Under his planned out cross-examination, Haidt found the students confabulating: they fabricated a rationale for their judgment, abandoned a rationale if it was shown to be inappropriate, and readily replaced it with alternative rationales. Furthermore, many students became morally dumbfounded: they claimed no knowledge of why the violation was wrong, but insisted that it was nevertheless wrong. The moral judgments of these folks did not depend on a rationale! Haidt concluded that moral-emotion based judgments come first and the ostensible reasoning underlying the judgments are *post hoc*.

**The five foundations of morality**

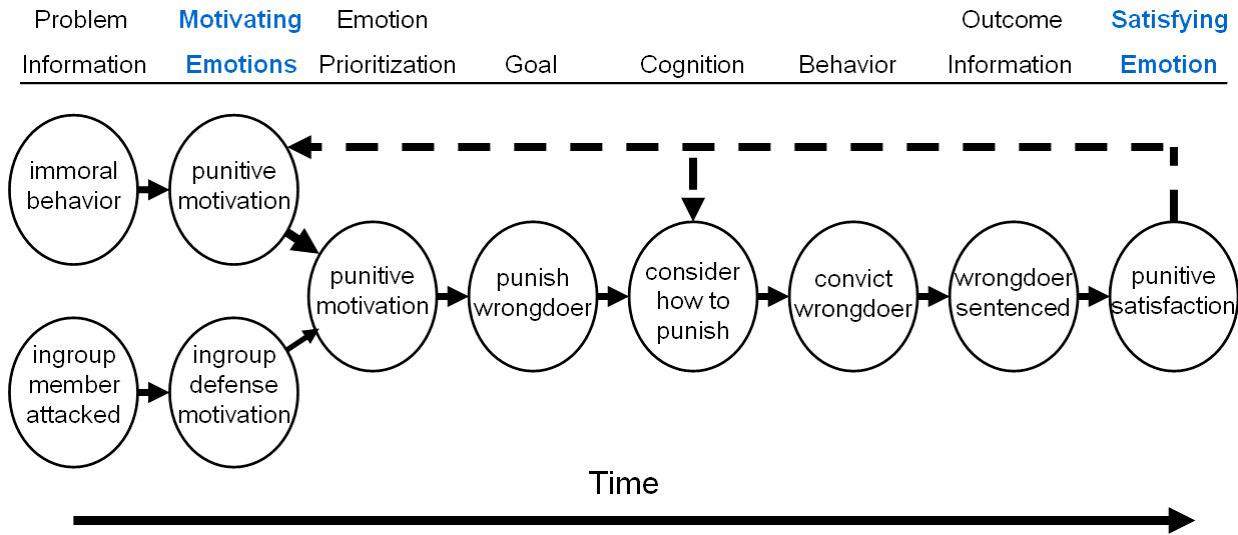
Moral judgments are evaluations of the goodness or badness of the actions or character of a person. Humans make moral judgments based on five virtues, or “foundations of morality”: harm, fairness, loyalty, authority, and purity (Haidt, 2007; see Table 1). Information about violations of these moral virtues may activate punitive motivation. Importantly, people who label themselves as extreme conservatives rate all five foundations to be of high importance. In contrast, people who label themselves as extreme liberals rate only harm and fairness to be highly important. Self-labeled moderate individuals have similar preferences, but to a lesser degree. In sum, psychological research has shown that conservatives and liberals perceive a divergent moral landscape.

**Table 1: The five foundations of morality (Haidt, 2007)**

Virtues	Domains	Examples of violations
Harm / Care	kindness, childcare, compassion, cruelty, suffering, aggression	Sticking a pin into the hand of a child you don’t know.
Fairness / Reciprocity	justice, honesty, trustworthiness, individual rights, cooperation, cheating	Knowingly accepting a plasma TV from a friend who knowingly bought the TV as stolen property.
Loyalty / Ingroup	patriotism, self-sacrifice, heroism, unity, treason, cowardice, profiteers, slackers	Saying something bad about your nation while calling into a radio show in a foreign nation.
Authority / Respect	obedience, deference, respect for tradition, magnanimity, power, uppityness	Slapping your father in the face.
Purity / Sanctity	chastity, piety, cleanliness, body and spiritual purity, religious sacredness, lust, intemperance, gluttony	Attending a play in which nude performers act like animals: crawling and urinating on the stage.

**The motivation-satisfaction model of emotions**

Most emotion theories explain one component of emotion, for example, what stimuli elicit emotions (Ortony, Clore, & Collins, 1988) or which action tendencies result from each emotion (Frijda, 2007). The motivation-satisfaction model of emotion integrates existing emotion theories to produce a relatively simple overview of the main components of emotion, framed in a timeline for the life of emotions (Koenig, in prep). Although this model applies to emotions generally, it is explained here using punitive motivation and punitive satisfaction as examples (see Figure 1).



**Figure 1. The motivation-satisfaction model of emotions.**

Imagine a hypothetical case in which a conservative state senator is accused of failing to report thousands of dollars in gifts from “friends.” Further suppose that, for illustrative purposes, a conservative juror in the case perceives on the one hand that the senator should have disclosed the gifts, but on the other that the charges – initiated by a liberal political opponent – are an attack on an ingroup member by an outgroup member. Two moral foundations were violated for the conservative juror: non-disclosure violated the fairness foundation and the political attack violated the loyalty foundation.

*Punitive motivation is triggered.* Information about multiple ongoing problems activates multiple motivating emotions. In this illustration the two ongoing problems are that the senator acted unfairly (all US senators should declare their received contributions) and that an outgroup member is attacking an ingroup member with an accusation of wrongdoing. These two problems each trigger a motivating emotion: punitive motivation and ingroup defense motivation, respectively. Concurrently activated motivating emotions are prioritized such that the emotion with the strongest absolute amount of hedonic valence (pleasure or pain) is prioritized and thus determines the overarching goal of the mind’s information processing. In this example punitive motivation is prioritized over ingroup defense motivation.

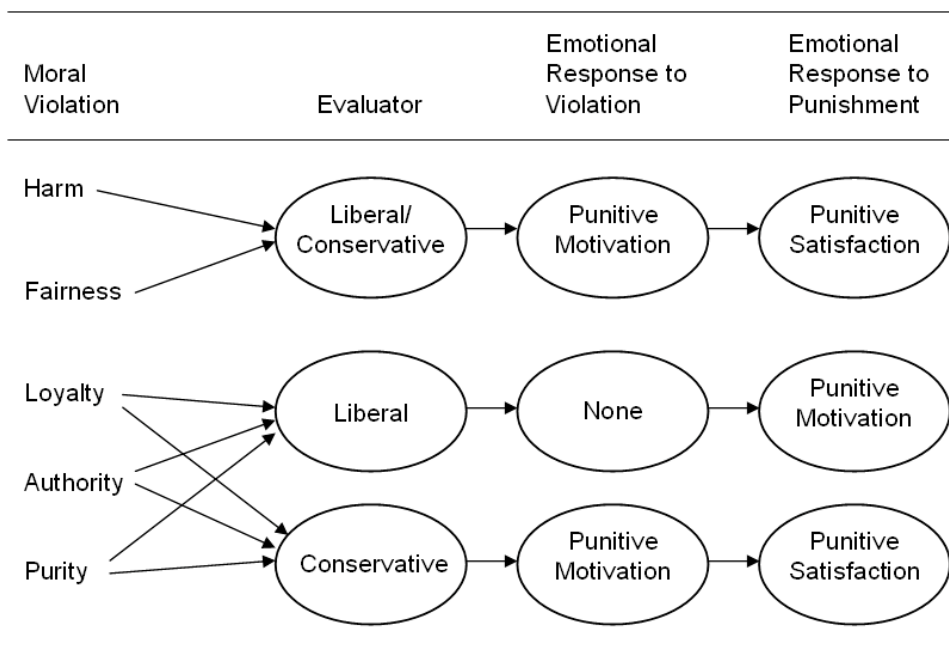
*Punitive motivation organizes thoughts and behaviors.* The goal of information-processing and behavior is the solution to the problem of the motivating emotion that is prioritized. In this example the goal is to punish the wrongdoer. Punitive motivation drives cognition (thinking) towards ways to solve the problem. The person considers available options for punishing the wrongdoer – such as voting to convict the senator or slashing the senator’s tires. Once plausible solutions are identified, they are evaluated and behavior ensues: the juror votes guilty. If ingroup defense

motivation had prevailed over punitive motivation, the juror would instead try to think of ways to defend her ingroup member and vote not guilty.

*Punitive satisfaction is triggered.* Outcome information indicating that the problem is solved triggers a satisfying emotion. Here, the conviction and sentencing of the wrongdoer activates punitive satisfaction. The satisfying emotion in turn deactivates relevant motivating emotions and updates knowledge about how to solve similar problems in the future, as indicated by the dashed line in Figure 1. Punitive satisfaction extinguishes punitive motivation and encodes memories for how the conviction and sentencing occurred. If ingroup defense motivation had prevailed over punitive sentiment, the juror’s reaction would depend on whether the jury acquitted or convicted. In the case of an acquittal, the juror may have group-victory satisfaction, like when your team wins the Super Bowl. In the case of a conviction the reverse emotion may occur, group-loss disappointment.

**Moral emotions, political orientation, and the courtroom**

Given the five foundations of morality, and if liberals and conservatives have different moral-emotional reactions to violations of the five foundations, then knowing whether judges, jurors, or any other decision-makers are conservative or liberal is useful information for framing your arguments in any phase of the legal process.



**Figure 2. Predicted emotional responses of liberals and conservatives to the violation of the five foundations of morality.**

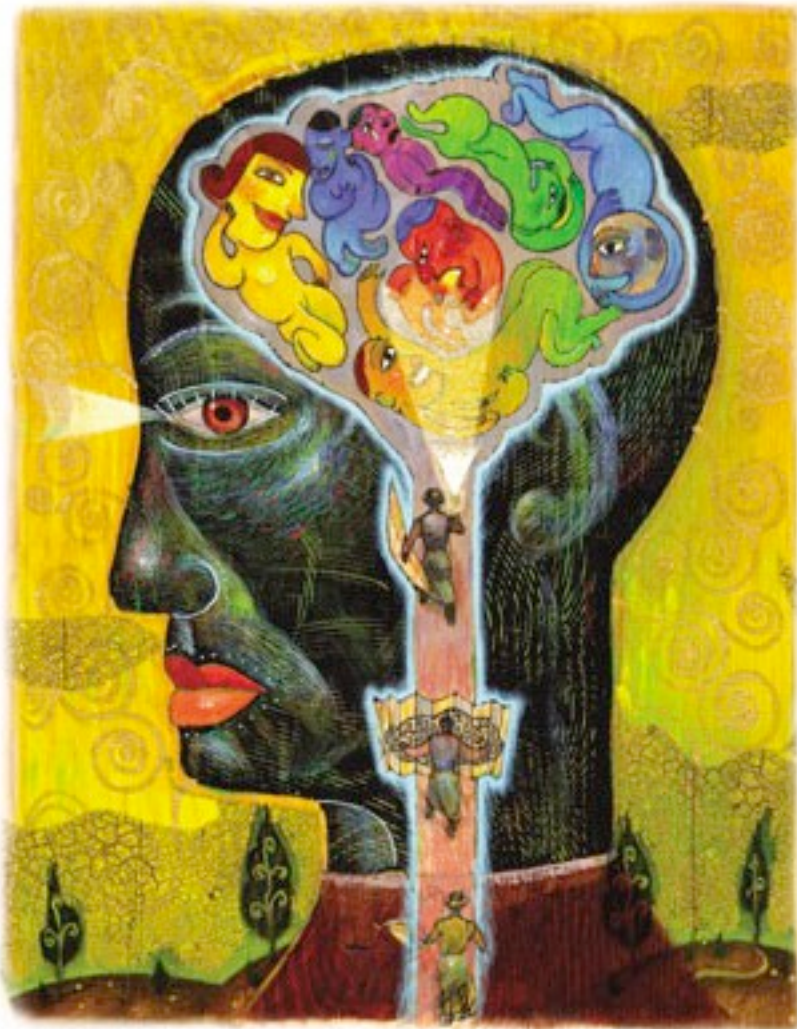
Figure 2 illustrates the emotional reactions of conservatives and liberals to violations of the five foundations of morality. Notice that conservatives and liberals respond the same way to violations of harm and fairness – with punitive motivation. This is the same way that conservatives respond to violations of loyalty, authority, and purity. In stark contrast, liberals are less likely to have an emotional reaction to violations of loyalty, authority, and purity. Instead, since liberals don’t see these violations as violations, liberals might react to punishment for these violations as an insult to their sense of harm and fairness and experience punitive motivation (towards whomever is believed to be responsible for the “unjust” punishment). No wonder liberals and conservatives have trouble understanding each other: A single act of punishment can be seen as virtuous for conservatives but unwarranted for liberals. An important implication of this



research for the courtroom is that conservatives may be more likely than liberals to convict, and to require higher punishments, for violations of loyalty, authority, and purity.

### Some practical suggestions

Providing appropriate arguments to any given audience and understanding the arguments of the opposing legal team—if they have a different moral system than you do—can be particularly difficult. Your own moral judgments come to you easily and intuitively, but taking the perspective of people with a different moral system takes effort. Thus, lawyers with conservative and liberal worldviews would be well advised to understand their own moral systems and the moral systems of people with a different political orientation.



**Frame your case:** Cases with violations of loyalty, authority, and purity can split a jury, the conservatives seeing a wrongdoer and the liberals seeing an innocent defendant. In contrast, a consensus among jurors is probably easier to achieve for court cases with violations of harm and/or fairness: all jurors (liberal or conservative) have the same emotional reaction. Thus, if you don't know whether a judge or jury is conservative or liberal, the safest bet is to frame a crime as a harm or fairness violation – you may increase the chances that a judge or jury will agree that a crime has indeed occurred and that a punishment is due. If the judge or jury is conservative, emphasizing violations of all five foundations (whichever are relevant to the case) might give you an edge by showing the pervasiveness of the crime to the sympathetic audience.

**Voir Dire:** As always, pick the jurors to fit your side of the case. For example, if you are a prosecuting attorney, jurors of any political worldview would suffice for crimes violating the values of harm or fairness, but having conservative jurors is preferable for crimes violating the values of loyalty, authority, or purity. If you are a defense attorney, the reverse advice holds. Liberals tend to weight violations of the values of loyalty, authority,

and purity as less important – ideal for acquitting crimes that violate these values. You will be hard pressed to find a juror who will not react to violations of harm and fairness, however, so no advice is provided for such cases.

**Self-awareness:** The final piece of advice depends upon who you are. If you have conservative values – utilizing the full breadth of humanity's moral virtues – be aware that liberal judges or jurors may not hear your arguments based on violations of the virtues of loyalty, authority, and purity. In contrast, if you are a liberal, you face the opposite problem. Another lawyer may be making arguments that, to you, fall flat – but to your shock and chagrin, the jury or judge is

eating them up! Your liberal ears – your honed moral emotions – are insensitive to information to which conservatives are highly reactive.

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*Bryan L. Koenig, M.A. [blkoen@nmsu.edu] is a Ph.D. student in social psychology at New Mexico State University in Las Cruces, New Mexico. He studies emotions and morality, with an emphasis on punitive sentiments. He would like to thank Dr. Timothy Ketelaar, Crystal Riley, Laura Butner, Jim Reeves, Esq. (at Reeves and Reeves, PA) for their helpful suggestions on an earlier draft of this article For more information about Mr. Koenig’s research, see his webpage at [http://web.nmsu.edu/~blkoen/].*



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We asked three experienced ASTC-member trial consultants to react to Bryan Koenig's article. Jan Spaeth, Chris Wilson, and Dennis Elias provide their thoughts.

### Jan Mills Spaeth responds:

*Jan Mills Spaeth, Ph.D., is a litigation consultant and owner of Arizona Jury Research in Tucson, Arizona. Her website is [www.azjuryresearch.com](http://www.azjuryresearch.com).*

In reviewing the “*Do Conservatives and Liberals Punish Differently?*” article by Bryan Koenig, I do see the value in identifying five moral values that can trigger emotional reactions from jurors and judges (harm/care, fairness, loyalty, authority and purity). I also appreciate the cognitive effort taken to recognize and define these values.

I can also see where conservatives could traditionally be motivated to punish violations for all five of these moral values. While I can also see some validity to the argument that liberals are less likely than conservatives to punish three of these areas (violations of loyalty, authority and purity), I have also seen factors that could alter this position. I will address this section of Mr. Koenig's article.

*For instance, in my experiences, whether liberals will punish violations of loyalty, authority and purity depends, among other things, on a) victim vulnerability, b) defendant wrongdoing, and c) the interactions of the five moral values with each other.*

I'll give a recent case example to demonstrate my points. “Jennifer” was a plaintiff in a breach of contract matter against her employer regarding retirement benefits. For years, her employer had verbally promised her \$2 million dollars if she was loyal to the company and remained with them. The company made over \$100 million in a ten year period. Jennifer was a major player in the company's growth. Forgoing the details, Jennifer was fired when the two owners divorced. She was not paid anything.

Although the alleged promise was never put in writing, after reviewing the case details and documents, in a trial simulation the large majority of mock jurors found in Jennifer's favor. As expected based on Koenig's article, most participants, liberals and conservatives, found that two of the moral values (care and fairness) had been violated and they wanted to punish the defendant. They concluded that the company had cheated Jennifer, and was unfair and dishonest. In addition, testimony indicated that the owners had been verbally abusive and cruel to Jennifer, causing her harm and suffering.

This is where our project result differed from Koenig's article, however. Loyalty became a very critical issue to all mock jurors (conservatives and liberals) because of Jennifer's perceived loyalty to her employer, and the employer's perceived disloyalty toward her. Most jurors punished the employer because of a *loyalty violation* as well as violations of care and fairness.

There's more to the picture, however. The victim of disloyalty, Jennifer, was an “underdog”. This was even more critical to liberals than conservatives. The vulnerability of the victim in this case made liberals very willing to punish the defendant for disloyalty. In contrast, had disloyalty been directed at a target viewed as large, distant, strong, indifferent, dominant or oppressive (like some liberals may view a business or nation), disloyalty may not have been a critical issue for liberals.

In addition, there was an interaction between loyalty and unfairness, and loyalty and harm. This interaction caused jurors to become even more angry at the employer, wanting to punish it more severely.

There was also an interaction between authority and unfairness. Mock jurors reasoned that the employer had the power and ability to make things fair for the plaintiff. It also had the obligation and responsibility to do so, and chose otherwise. Although the mock jurors did not view the defendant as having violated authority or having been disrespectful, they did view the defendant as having abused its authority. Thus, authority did play a key role with both liberal and conservative jurors. Most jurors wanted to punish the defendant more because it defied the moral obligation of using authority to improve matters and do no harm.

If gluttony (listed as a violation of the purity moral value) can be construed as greed and over-satiation, the fact that the defendants made over \$100 million in 10 years and failed to pay Jennifer anything (after 20+ years of hard work and loyalty) had the same effect as violation of the authority value. Again, the interaction of a purity violation with both the violations of fairness and care caused mock jurors to punish the defendants more than they otherwise would have. (The case settled while the trial was in progress with a very positive result. Juror polling supported a high verdict as well.)

***In summary, I point out that the perceived vulnerability of the plaintiff, the perceived wrongdoing by the defendant, and the interaction of these five value violations can result in liberals punishing defendants for violation of all five moral values, not just two of them.*** It is critical that liberals first find that the values of care and fairness have been violated, however, which the mock jurors in this case did.

In addition, these mock jurors found that the defendant had been disloyal, had failed to use its authority to ensure justice, and had been “gluttonous” and impure. As a result, it punished the defendant for violation of all five moral values, and the perceived combination of five violations appeared to result in higher verdicts than would have two or three combinations, alone. More value violations appeared to lead to higher anger toward the defendant, and a stronger desire to punish. This is certainly an area that warrants further research.

## Chris Wilson responds:

Chris Wilson [[CWilson@w-r-s.com](mailto:CWilson@w-r-s.com)] is CEO of Wilson Research Strategies, a market research, political and trial consulting firm based in Washington, DC. Chris has worked for over 100 of the Fortune 500 and more than 100 current and former Members of Congress.

As a political pollster, a conservative Republican and a trial consultant, I find Bryan Koenig’s article “*Do Conservatives and Liberals Punish Differently?*” fascinating and directionally on target. Koenig provides a useful rule-of-thumb that matches our experience with using behavioral research for jury selection and for tailoring case presentation to a jury.

However, like any simple rule-of-thumb, his recommendations leave out a large amount of information about the way any specific real juror will process information when analyzing ideology.

We do tens of thousands of voter interviews each election cycle, and ask respondent ideology in each study. In a recent WRS national survey 37% percent of the country defined itself as conservative, compared to 24% liberal. In analyzing respondents (most all potential jurors) ideological attitudes, we must account for several different types of conservatives (e.g., social conservatives, fiscal conservatives, Reagan Democrat conservatives, religious conservatives, national security conservatives, etc.).

There are also degrees of conservatism that must be accounted for. In the same WRS national survey cited above, just 18% of respondents identified themselves as “very conservative” while only one in twelve (8%) said they were “very liberal”.



Therefore, there is a large group of potential jurors out there who don't fit neatly into the simple dichotomy Koenig presents here.

Our approach to understanding potential jurors starts with data from a community survey. Using community survey data we can understand the mental and emotional “frames” that potential jurors bring to the courtroom. In looking at the survey data, we use statistical models to help identify a few key questions that define unique perspectives in the community—these then make useful additions to jury questionnaires or components of the Vior Dire process.

In some jurisdictions we are able to take this technique a step further by including behavioral data in the survey or appending it to the survey data. This data can include magazine subscriptions, charitable giving, automobile ownership and a variety of other items that help us define groups in the community with unique mental and emotional “frames” about the issues in the case.

The power of this technique is that, where allowed, we can define the same indicators for each member of the jury pool by buying data about them from a consumer data company. In this way we can develop a detailed prediction of the exact mental and emotional frame each potential juror will bring to the issues in a case.

Understanding the sub-groups in a jurisdiction and the mental and emotional frames they will use to process the issues in a case is a powerful advantage. Whether we use key jury questions or purchased data, a jurisdiction-specific research-based approach provides powerful information for jury selection and case presentation.

As you prepare for any case, understanding as much as possible about how potential jurors will process the information and emotional content of your presentation is critical.

Bryan Koenig presents a useful rule of thumb that can be easily applied in any case; this is a good and useful tool.

Conducting research in the specific jurisdiction to identify sub-groups and key jury questions to classify potential jurors is a better and more powerful approach.

Adding behavioral data to the survey and then using purchased behavioral data to classify potential jurors is, when possible, the best approach because it allows us to very accurately define how each potential juror will process your presentation and the other side's presentation of the case.

## **Dennis C. Elias responds:**

Dennis C. Elias, Ph.D. is the Senior Consultant with Litigation Strategies, Inc. ([www.litigationstrategiesinc.com](http://www.litigationstrategiesinc.com)) based in Scottsdale, AZ. He serves on the Board of Directors of the American Society of Trial Consultants.

The manifest reality of every jury trial is that jurors selectively attend to facts and testimony that reflect their life experiences, attitudes, values, preferences and personalities. Everything else is ignored, discounted or minimized in importance. Every jury trial is essentially a referendum upon the character of the parties and how that character reflects motivation for the alleged acts, omissions and wrongs. In the minds of each juror a melodrama emerges as narrative. In spite of the face validity and simplicity of such an approach to solving the problem of finding justice, Mr. Koenig's

reified notions of punitive motivation and punitive satisfaction suggest intrinsic structures of human experience that are necessarily over simplified and problematic to ascertain within the constraints of voir dire.

Personality is interior and private, with no direct access to the outside world (everything is filtered through the senses: one's eyes, ears, touch, etc.). For that reason, each person creates a mental world that represents the real one to a greater or lesser degree. Mental models guide each person and how he or she perceives the world, including those social features he or she they prefers or abhors. That mental model provides motives for the full spectrum of behavior, including motives to sit on a jury and post hoc explanations for a verdict.

While personality is typically conceived of as being rather fixed and persistent, the situational vagaries of the individual juror's life, case fact patterns and party personalities can and do elicit choices and behavior from jurors that is apparently "against type". Is there such thing as an invariant conservative or immovable liberal? Even the bell shaped curve of statistical normal distribution tells us that the extremes are indeed rare.

Jurors by and large want to do the right thing. Presented with the legal dispute they consistently ask themselves, "Is it Right?" before they consider "Is it Legal?". Being able to frame and sequence case facts, evidence and testimony in a manner that satisfies their need to make the moral determination empowers jurors in the confusing and often labyrinthine world of the law.

To utilize Koenig's theory, one must be able to reliably determine the moral philosophy of the individual. The real conundrum remains that determining venire panelists moral bent is significantly hampered by limited voir dire, intentional panelist misdirection and fact that no two jurors may agree (or disclose!) exactly what conservative or liberal morality means to them personally.

Koenig's parsing of the moral underpinnings attributed to conservative vs. liberal jurors mirrors significant related research on personality characteristics of such moral types. A recent blog by John Mayer, Ph.D., of Emotional Intelligence fame, reflects the underlying personality foundations suggested by Koenig (<http://blogs.psychologytoday.com/blog/the-personality-analyst/200809/voting-your-personality>).

*"Liberals:*

- View social inequities and preferred groups as unjust and requiring reform.*
- Prefer atheists, tattoos, foreign films and poetry.*
- Endorse gay unions, welfare, universal health care, feminism and environmentalism.*
- Exhibit creativity, which entails the capacity to see solutions to problems, and empathy toward others.*
- Tolerate complexity and ambiguity.*
- Are influenced by their work as judges, social workers, professors and other careers for which an appreciation of opposing points of view is required.*

*Conservatives:*

- Willing to defend current social inequities and preferred groups as justifiable or necessary.*
- Prefer prayer, religious people and SUVs.*
- Endorse the U.S. government, the military, the state they live in, big corporations and most Americans.*
- Are more likely to be a first-born, who identify more with their parents, predisposing them to a greater investment in authority and a preference for conservatism.*
- Have a fear of death, reflecting an enhanced need for security.*

- *Are conscientious – the ability to exert personal self-control to the effect of meeting one's own and others' demands, and maintaining personal coherence.*
- *Need simplicity, clarity and certainty."*

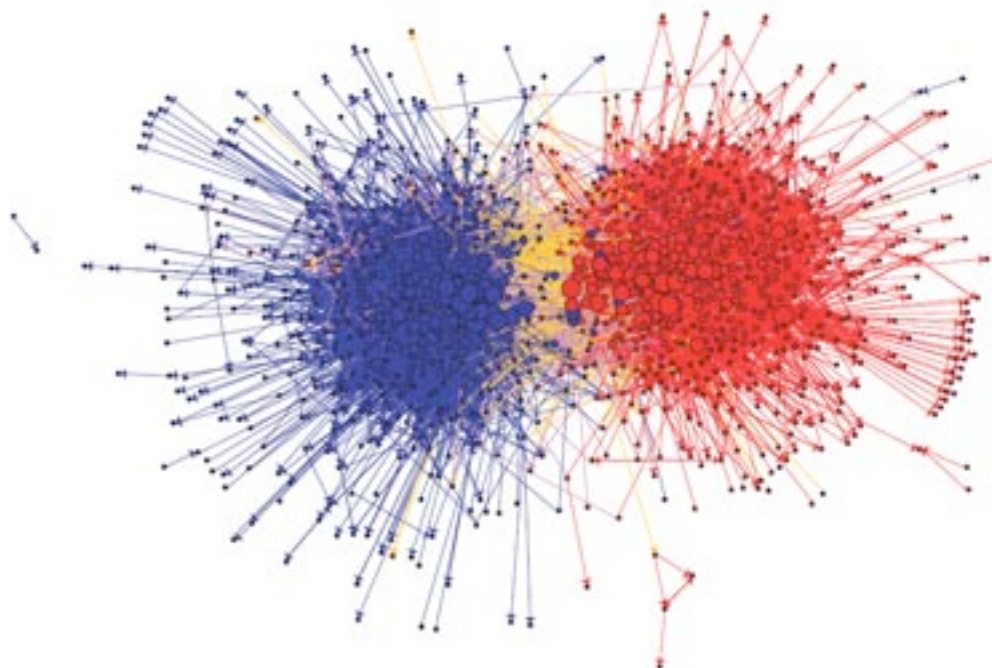
There is conceptual and practical utility to Koenig's notions. The "five foundations of morality" have descriptive power applicable to narrative composition. Conceiving of case fact patterns in terms of violations of Harm, Fairness, Loyalty, Authority and Purity has explanatory elegance. Framing argument to address those general moral values as they apply can have real stickiness in the minds of jurors, regardless of moral orientation. Of real utility is the recognition that both liberals and conservatives can resonate with violations of Fairness and Harm in both civil and criminal matters.

No actual jury is "conservative" or "liberal". Effective jury deselection efforts necessarily create panels that are more likely than not going to be an admixture of moral and political philosophies, and thus, neither fish nor fowl. Framing the omnibus issues to meet the ready digestion of the most jurors is the best investment second to having a crystal ball.

My take away from Koenig's article is the "Five Foundations". One possible effective tool suggested by this work would be the generation of voir dire or SJQ items focused upon eliciting responses to the moral weight of Loyalty, Authority and Purity values as discriminators of moral philosophy. Using questions that don't directly suggest a mining for political party affiliation, religious orientation, etc., have a greater chance of being allowed by fussy judges and not being rebuffed by huffy jurors.

Finally, Koenig's admonition to "know thy self" is spot on. Advocates and consultants readily lose sight of their own biases and moral compasses. Knowing is step one to overcoming the blind spots and self delusions that painfully resolve when the foreperson of the jury informs you that you missed the point.

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November's issue of *The Jury Expert* is filled with practical tools to use in a changing world. Whether you want tips on engaging liberals, conservatives, women, varying generations or using the just world belief system to your advantage--it's all here. Plus strategies for cross-examination of narcissistic witnesses and learning about reiterative and conceptual graphics....what more could you want? Something to read? Check out our book review.

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Tell us what you would like to see in future issues to build your arsenal of tools. Make your requests known via an email and we'll get right on it! What do you want to see in upcoming issues? What topics? More of what? Less of what? Do tell..

Here's a sampling of what we have coming up in future issues: race in juries, confidentiality issues in pre-trial research, a Snyder/Batson update, how disgust figures into decision-making, authoritarianism and litigation, many kinds of bias and how to work around it. And much more. Thanks for being a part of *The Jury Expert* and if you like us, tell your friends and colleagues.

*Rita R. Handrich, PhD*



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**Rita R. Handrich, PhD** — Editor  
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**Kevin R. Bouly, PhD** — Associate Editor  
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