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### **September 2013 Jury Tip: "Not all strong jurors are the same"**

Have you ever watched a real or mock jury deliberate? If so, you've probably noticed that just a few jurors do 90% of the talking. It's a fairly well-known phenomenon that jury deliberations are not democratic, in practice. Not all jurors are equally important, some jurors influence verdicts more than others, and most of the time, just one or two or three jurors do 90% of the arguing and deciding.

So I'm not saying anything revolutionary when I say that not all jurors are equally influential and equally important. Some jurors are vocal and active in deliberations, and some simply follow quietly. But you may not be aware that there are significant differences among the vocal jurors; not all vocal jurors are equally influential. Just because a juror is going to be loud and vocal and talkative does not necessarily mean they will be an influential juror. They'll still be talking and arguing and fighting, but they won't necessarily be persuasive to the other jurors. Here's why.

Vocal jurors are not necessarily persuasive jurors, and persuasive jurors are not necessarily vocal. What I'm calling a "vocal juror" is someone who is likely to be talkative and opinionated, engaged in the deliberation process, and probably much more stubborn than the quiet, passive jurors (the "followers") on the panel. But vocal jurors aren't necessarily leaders. In fact, the more opinionated the juror is, and the more a juror stubbornly advocates, the less credible the other jurors will usually find the vocal juror.

On the other hand, the "persuasive jurors" are the natural leaders, the salespeople of the jury. Instead of arguing and advocating, they are friendly and inclusive, even when they have an agenda. Persuasive jurors influence the deliberations in a savvy way: by appearing to be reasonable and objective, by giving the other jurors the impression that they are interested in hearing both sides, and by hearing out opposing points of view instead of arguing. Vocal jurors want to argue and advocate immediately, but this doesn't work nearly as well as a persuasive jurors' credibility-building and consensus-building.

But how can you tell the difference? To be honest, knowing the difference is an expertise that comes with having seen hundreds of jury selections and hundreds of mock jury deliberations. But in general, a vocal juror will be primarily loud and opinionated during jury selection. The more strident and stubborn they seem to be, the more likely they are to be a "vocal" juror. And there are sub-types of vocal jurors; a juror need not be a naturally loud, opinionated know-it-all to be vocal in a particular trial.

"Invested jurors" don't necessarily have to be loud, opinionated people to become "vocal jurors," given the right case. By "invested," I mean jurors who have a strong, personal connection or stake in the case. Jurors who have had a similar, personal experience (for example, a juror in a wrongful death trial whose grandmother died in a car crash, or a

juror in a medical malpractice trial whose spouse is a surgeon) or relationship will be much more emotionally and intellectually "invested" in the case and its outcome.

Persuasive jurors don't come across as loud, stubborn, or opinionated. They are usually enthusiastic and interested during jury selection, never withdrawn; they certainly have opinions, but they take great pains to appear objective and reasonable. Persuasive jurors have something likeable or magnetic about them, so you as the attorney will probably be drawn to them. Appearing friendly, reasonable, talkative, and highly engaged without seeming strident or abrasive is the general equation for a persuasive juror.

And again, there are sub-types of persuasive jurors. One in particular is the "expert juror." Jurors love to follow jurors they perceive as a reliable authority on the complex, confusing issues being presented; sometimes it's the juror the others perceive as the smartest or most sophisticated, but whenever a juror is particularly knowledgeable about the issues involved in trial, that "expert juror" will become a "persuasive juror" that can influence all the others. This is why lawyers are so dangerous and influential on jury panels. I hope I'm not hurting your feelings when I say that jurors don't listen to lawyers because they love and admire you; it's because they defer to your training and understanding of the law.

Be careful, though, when you identify an expert juror: they don't always know what they're talking about, so make sure that the lawyer or engineer or human resources representative on your jury panel actually sees the issues the same way you do.

It's important to understand the reason an expert juror is influential while a vocal juror is not. Jurors are persuaded by other jurors' information, not other jurors' opinions. Jurors won't necessarily be persuaded by a vocal jurors' attitude that "insurance companies are greedy and dishonest," but they will be persuaded by a juror who shares a story about an insurance company ripping off her brother-in-law, and they will definitely be persuaded by a juror who works as an auditor for the insurance industry.

Now why does it matter if a juror is vocal or persuasive, invested or an expert? No matter what a juror is, you obviously want to strike those who are more receptive to the other side's case and keep those who seem receptive to yours. If you have enough strikes to get rid of all the bad persuasive jurors and all the bad vocal jurors, who cares what kind the jurors are? Because when you don't have enough strikes to get rid of all the jurors you distrust, as you often won't, you'll need to prioritize.

The quiet, passive followers should be the last you strike; only get rid of them as a luxury. As I've written before, I would often rather strike an influential juror who may be good but may be dangerous than a quiet juror I'm sure will be against me, especially when I love the makeup of the whole panel. First off should be the persuasive jurors; they can simply do too much damage because of how influential they can be. These are the jurors who can swing the entire panel the other way. I'd rather keep a bad vocal juror than a bad persuasive juror. As stubborn and dug-in as they can be, vocal jurors won't

influence others the way persuasive jurors will. And in fact, I often see vocal jurors alienate the other jurors, which helps the good jurors on the panel tune them out.

The next time you're in trial, don't weigh all your jurors the same.

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