

LADIES AND GENTLEMEN: VOIR DIRE PRESENTS...SOME QUIRKY JURORS

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"The fool doth think he is wise, but the wise man knows himself to be a fool."
William Shakespeare, 1564-1616, "As You Like It," Act 5, scene 1.

Every jury develops its own personality that emerges as trial progresses. After deliberations end, a jury can be described as being reasonable, emotional, detached or inexplicably sideways with their verdict. This newsletter examines the quirky personalities in every jury pool and the cause and peremptory challenge decisions the attorneys face while keeping in mind the dynamic of the remaining personalities sitting in the box.

The Big Talker

While most people seek to have the spotlight off of them during voir dire, the Big Talker is the person who, once called into the box, actually relishes the attention. Sometimes they seek attention even before stepping into the jury box by trying to engage counsel with smiles, or entertaining the fellow audience members with jokes and other commentary. Once in the box, they profess to have numerous life experiences and will continuously volunteer information in the group interview. Indeed, the frequency of their raised hand in response to counsel's inquiries often prompts reaction of lighthearted commentary by the judge or counsel.

Comment indicating a Big Talker:

"My wife is my hobby. I am a bank teller now, but I am in an explorers club and our direction is law enforcement. My aunt works for the LAPD and she has more muscle than me. In high school, my friend went to the restroom and there was a girl being raped. My friend knew the girl. I would like to get into law enforcement. My brother is with the LAPD too. And my dad is a correctional officer. Obviously, I want to become a police officer to keep law and order. I have never been on a jury, but it would be interesting." Male, late 20's, Bank Teller.

Peremptory Challenge for the Big Talker?

This personality, who wants to participate in deliberations, can be a loose cannon. In making the strategic challenge decisions, counsel must consider whether the life experiences are credible or merely attention grabbing. Counsel should remember the rule that someone who may have life experiences that align too closely with the evidence may not be an asset in deliberations. Better to have a juror who is an intelligent blank slate with no similar experiences sitting before counsel than a personality seeking acclaim through an alleged myriad of experiences, some of which could form dangerous and untrustworthy comparisons.

The Power Dealer

Also a personality with lowered inhibitions, this person presents with articulation, displays leadership skills, and tends to be oblivious to what others think. In fact, they seem to be poor judges of other people's reactions to them because they are too self absorbed to notice. Sometimes they rely on certain stereotypes in their reasoning and justification. They provide some indications of being risk takers, apparent from their list of life experiences. They do not shy from risk that can bring some success to their lives. Given their leadership characteristics, sometimes their overconfidence resembles cavalier behavior.

Comment indicating a Power Dealer:

"I have hired and fired dozens of employees. People who complain were those not performing anyhow. Two underperforming females brought gender discrimination suits against the PhD committee because we denied their candidacies. I have been an expert witness in administrative hearings for over 35 years regarding toxicology and environmental health, always on the side of the corporation." Male, age mid 60's, Professor and researcher at NYU Medical Center.

Peremptory challenge for the Power Dealer?

It depends on which side the Power Dealer perceives to be the more powerful player. Power attracts power.

The Nullifier

During voir dire, this personality seems pleasant, and may tend to sit quietly choosing not to participate in any conversations between prospective jurors. Once behind the closed door of deliberations, the Nullifier offers unfiltered opinions, sometimes relishing being the devil's advocate. Given their confidence of sharing their opinions, this personality makes emphatic statements, regardless of whether or not they have a life experience or other substantive basis of knowledge or fact. They speak critically of the law and reject and refuse to follow it. They do not shrink at others' arguments and upon being challenged they can become more determined to convince others of their beliefs. Indeed, there appears to be some orneriness to this personality.

Comment during voir dire indicating a Nullifier:

"Company policy is a tool to get rid of people who don't fit in. They make decisions about people and how to get rid of them. So a corporation is not a person, rather it is multiple people making multiple decisions and policy. Organizational structures strip out human emotions." Male, age mid 60's, retired manager at an oil well.

Peremptory challenge for the Nullifier?

A Nullifier is too risky to keep on the jury, given one's strident belief that rejection of the law is the right direction to take for the situation at hand.

The Victim Identifier

This person will seek out the perceived victim in any story and advocate for them. In voir dire, they make no attempt to hide their bias. During questioning, they respond with general expressions indicating empathy, but once their responses are probed further, they reveal something deeper, indicating an intense disappointment in their life, whether this would be from a family relationship, occupational pursuit, or educational goal never attained. They appear to seek out and admire other victims, thereby supporting the old adage that "misery loves company."

Comment during voir dire indicating a victim identifier:

"This happens every day to people, and to people who cannot do a lawsuit because they don't have the money... I have seen these things happen in my life a lot. This plaintiff is fortunate enough that she has someone to fight for her against the corporate ways." Female, age late 60's, retired from a blue collar job.

Peremptory challenge for the Victim Identifier?

Counsel must be aware that this person will advocate relentlessly in the deliberation room. Why? Because in some way they appear to be arguing on behalf of themselves, as they refer back to their life grievances when making points of argument. Counsel must objectively ponder which party carries the greater victim label for which this prospective juror would likely identify.

The Cynic

During voir dire, this personality will not mask their negativity. In fact, they see the dark side of any story, and suspect motives behind facts. They feel certain that their analysis accurately depicts the evidence, event or situation before them when in fact they could be completely wrong, such as their derisive perspectives on the now-legendary McDonald's verdict. They cannot be persuaded to the side of the more positive perspective. Often, this person finds compromise to be difficult and will relentlessly advocate for their perspective to dominate deliberations. It depends on the strength of the other personalities on the jury to determine whether the Cynic's opinions will prevail. In differentiating the Nullifier and the Cynic, the Cynic will respect and follow the law, albeit perhaps grudgingly, whereas the Nullifier will not.

Comment during voir dire indicating a cynic:

"I had an injury and a long recovery and I did not receive anything for what I endured. So, I can give damages only IF the evidence supports it." Male, age 45, white collar corporate executive.

Or, a cynical opinion specific to the legal profession: *"I have testified; I had to give a deposition. Being a witness was bad. I was young and I didn't know anything going on. Everyone was super condescending. I felt very angry toward the lawyers and the others when I left. This case feels babyish and this better be worth my time."* Male, age early 30's, actor.

Peremptory challenge for the Cynic?

Depending upon who the parties are in the lawsuit, and the Cynic's feelings about awarding damages, this person could be more foe than friend of plaintiff because their skepticism has them doubting plaintiff's pursuit of justice. An exception of when a Cynic may align with plaintiff is the David v. Goliath lawsuits, when Cynics express anti-corporate sentiment.

The Waffler

In a protracted jury selection, usually over two or more days, this personality will make a statement or provide an assurance on the first day, and then later seek to further explain what they previously stated. A perilous form of waffling emanates from a pledge that counsel seeks from the juror to be impartial and open to listening to the evidence. Accordingly, the revised explanatory statement makes declarations in contradiction to what had been previously pledged.

Comment indicating a Waffler:

"I thought it over last night and I can be fair." Female, mid 60's, retired administrative assistant.

Peremptory challenge for the Waffler?

Best to be wary of the amended promise pledging fairness and impartiality. Trust the first statement as being the most credible because it reflects an instinctive and spontaneous response. A revised response may have an underlying motive, unless it is stated as a clarification of fact.

The Wild Card

This personality projects unpredictability by making statements that sound random through experiences and opinions hurled every which way. Counsel wonders if the underlying intent of Wild Card's recitation is to be excused for cause.

Comment during voir dire indicating a Wild Card:

"I would want to understand an employee's responsibility [regarding addiction and employment] because zero tolerance policies are generally draconian... organizational structures strip out human emotions that a family run structure imposes more values... I have had situational addiction to marijuana within the last five years, but have actually been smoking it for the last 25 years. I have no problem with my work. I am of different minds on different occasions." Male, age early 40's, computer consultant.

Peremptory challenge for the Wild Card?

Yes, by either side because as he states, Wild Cards tend to be "...of different minds on different occasions." Counsel should not take the risk as to which mind this personality would be in when deliberating.

Conclusion

Jurors bring to voir dire, and ultimately to deliberations, certain personalities and life experiences that form the basis of their thought process of reasoning and comparison. Once the cause and peremptory challenges are completed, what remains are citizens contributing to something greater than themselves as they debate and defend the challenging evidence before them.

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