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# Jury Dynamics

## *The Pressure to Conform*



# JURY DYNAMICS:

## THE PRESSURE TO CONFORM

*“I have regrets that I caved in.”<sup>1</sup> “I didn’t have anything sufficient to use as an argument against it, and once you have ten people arguing against you it’s pretty difficult to get anywhere.”<sup>2</sup>*

What leads jurors to adopt an opinion not because of the argument, but because of the social pressures applied? In the case of the jurors quoted earlier, both did not reach their verdict because they had been persuaded by the evidence, testimony, or arguments; they felt pressured to comply and, for both, even days later they felt unsettled, upset, and unsatisfied that they did not fight for what they truly believed. How often does this happen and why? The “how often” is impossible to know, but psychological studies of human behavior and decision making, along with countless hours of watching juries deliberate and hundreds of juror interviews, shed some light on the “why.”

In the 1950s, two psychologists, Muzafer Sherif and Solomon Asch, conducted pioneering studies in the area of social conformity. Essentially, both were designed to uncover how a participant responds to the same question a confederate answered incorrectly. Asch had participants —the real subject and confederates —answer a variety of questions about a set of line. The confederates would answer first and always give the same, but incorrect answer. When it was the test subjects turn, he/she had a decision to make, go with what was the obvious answer or go along with the majority who answered incorrectly? 33% of the time, subjects went with majority.

If an individual abandons what is clearly right on a simple perceptual task, what will they do with something more complex? In the other study, Sherif used the movement of light as his stimulus. Based on the autokinetic phenomenon, Sherif asked people to estimate how much the light moved. Over time, the test subjects began to conform to the confederates answer instead of sticking with the initial assessment. The subjects conformed to the group an astonishing 70% of the time. Through the years, studies involving attitudinal issues with no clear right or wrong also found over 70% compliance.

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<sup>1</sup> George Zia, a juror from Sheriff Mike Carona’s conspiracy trial recently completed in Los Angeles. “Carona juror: ‘The worst thing I did in my life’” Orange County Register, Thursday, January 22, 2009.

<sup>2</sup> Juror interview conducted by Tsongas in another matter.

Researchers have classified two basic types of conformity: 1) normative—peer pressure type—influence and 2) informational—weight of the evidence—influence. The jurors' quoted earlier are indicative of those who have normatively complied. In deliberations, if 11 of 12 people are adamantly supporting one position, it is difficult for someone to go against the group and hold fast to his/her viewpoint. Remember, while it's possible for one juror to make a difference, *à la 12 Angry Men*, to stand up to that kind of pressure not only takes a strong and independent person, but it also takes an *armed and motivated* person. Armed and motivated has become a Tsongas mantra and conformity research confirms what we have long held to be an important maxim—you must have jurors in the deliberation room that not only remember the arguments and evidence you presented, but are energized to access it and use it against opposing jurors.

Armed and motivated jurors will be much less likely to bow to social pressure. Instead, the evidence and arguments become the critical components. Informational influence brings about attitude change because of the “rightness” of the position. This type of change is longer lasting and stronger than normative compliance. If one adopts a position because they were truly persuaded through the information presented, they are more likely to hold to this position even in the face of other's persuasive attempts.

Researchers feel that informational influence is strongest when a decision is based on facts that can be analyzed and reasoned through in an objective manner. Normative influence is strongest for social judgment issues where the decision about what is right or wrong is not black and white. Damages are a good example. Kaplan and Miller found that jurors were normatively influenced when discussing both punitive damages and noneconomic damages. Informational influence played more of a role in a group's economic damages' discussion. This makes perfect sense considering economic damages are typically based on “real” numbers or at least something that can be quantified, while determining what one is owed for pain and suffering is a judgment based on what a group feels is acceptable or typical. Without strong arguments or evidence for why one number should be preferred, there will be those who “go along” for the sake of group cohesiveness or because they truly have no idea.<sup>3</sup>

Normative influence does not have nearly the long-term impact as informational influence since the person conforming does not believe they were wrong—they simply feel they lacked the confidence to express their position in a strong, articulate manner. Often they report that they saw no reason to fight a losing battle. The bottom line is they changed not because

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<sup>3</sup> M.F. Kaplan & C.E. Miller, *Group Decision Making and the Normative vs. Informational Influence: Effect of Type of Issue and Assigned Decision Rule*, 53 *Journal of Personality & Social Psychology* 306 (1987).

they felt they were “wrong,” but because they felt the group wanted them to change. In any society, violating norms makes people uncomfortable. And, since no one likes to feel uncomfortable, sometimes it’s just easier to “go along.” Mr. Zia is a perfect example. He went along with the group, and once removed from the situation, he felt he could express his true belief.

The other juror quoted made comments that mirror many reports from panelists who succumb to peer pressure. He said that he “couldn’t remember the arguments” and “felt like [the defense jurors] had more to argue with.” As mentioned earlier, jurors must be given the necessary tools to combat other, sometimes very vocal, jurors. Jurors must be armed with the evidence, arguments, and testimony that clearly articulate your client’s position.

Asch gives us some insights into what types of people are more likely to succumb to normative influence. He described two basic personality types: yielding (conforming) and independent (nonconforming). When questioned about why they responded the way they did, yielding personality types did not say they thought their desired answer was wrong; instead they expressed that they were unsure. They lacked the confidence to push for what they truly believed. Others yielded because they did not want to be ostracized from the group. In a recent jury debriefing, a juror expressed that he had a very difficult time following the “science” and didn’t feel qualified to talk about the issues. His “excuse” for following the jury became that he “just didn’t know” and others “seemed so sure.” Again, had the information been more accessible to him (delivered in a manner he could understand), instead of the jury becoming 12 defense jurors (when starting six and six), they might have ended as 12 plaintiff jurors.

When in a group, those unsure about what is right or wrong search for information to help make the decision. Typically, the more people assert *one* position the more it becomes *the* decision. Sometimes, there is a dramatic effect when one person is able to convince another group member through informational influence. The “true partner effect” – a reduction in conformity if one other person comes out in support of the non-conforming person--can have a sea-change effect on overall conformity levels. In the Asch studies, conformity was cut by 80% when there was just one “partner” added to the group.

Keep in mind, a single minority voice can influence an entire group if the person is consistent in their opinion and arguments, and is able to call into question what the others think through a rational and calm analysis of the issues (think Henry Fonda). The minority member must establish credibility through how they espouse their view. Are they rigid or flexible? Do they listen or dominate the conversation? Through watching mock juries deliberate, we’ve seen numerous instances of when a lone juror was influential and when they were not. They never make a difference (in fact

they actually push some who might have been on the fence to jump to the other side) if they are loud, obnoxious, and demeaning to others.

Conformity research has three important take-aways for your trial strategy:

- Consider how you can arm your jurors with the information they need to make credible and accessible arguments. It is not good enough to simply give them the evidence and testimony and hope they can put it together into a framework that supports the decision you seek. Make it easy for them to process, understand, and remember your arguments by providing a case narrative, using demonstratives, and bottom-lining how the evidence and testimony fits the verdict form questions.
- Recognize that at times your jury will resort to normative influence. If there is no clear-cut, objective evidence or testimony to support your position, how can you set up a social norm that supports the decision you seek? Is there a precedent? Are there examples you can share? Analogies you can make? Social parables you can deliver?
- In jury selection, ask questions that will pinpoint jurors who are predisposed to be opinion leaders and non-yielding personality types—those who are not afraid to stand up to a large, vocal majority. You need to find out their preexisting attitudes and experiences in order to be as sure as possible that when they are arguing in the deliberation room, it's to your benefit. If you cannot tell, they become a high risk juror and probably need to be struck.