

September Jury Tip: “Identifying Inflexible Jurors”

On any given panel of potential jurors, there will be a handful of jurors that may be so hyper-predisposed against the facts of your case that they might be impossible for you to win over. Beyond biased, there are jurors on every venire panel whose view of the world is so inflexible that they literally cannot accept the POSSIBILITY of situations that conflict with their worldviews. Identifying and removing these jurors from your panel is essential, but the identifying part is trickier than it may seem.

Jurors who have biases against certain types of people and situations—a juror who has a distaste for corporations or lawsuits, for example—are relatively easy to identify because people are usually consciously aware of things they DISLIKE. With these jurors, the identifying is easy but the removing part is challenging; in next month’s tip, I’ll discuss better ways to build foundations for cause challenges with these types of jurors.

On the other hand, jurors whose worldviews are uncompromisingly rigid—we’ll call them ‘inflexible jurors’—are rarely if ever aware that their view of the world is a constructive bias that will color how they view a trial. These jurors don’t dislike the litigants or what they represent, but when one side presents a situation that conflicts with their view of the world, an inflexible juror will be completely unable to imagine and accept the possibility of that situation being a reality and will reject it as false, no matter how strong the evidence. My favorite example is the juror who can never imagine a doctor making a mistake in judgment; these jurors hold doctors in such high esteem that they are literally incapable of second-guessing doctors and rendering plaintiff verdicts in medical malpractice trials. And yet most (if not all) inflexible jurors are completely unaware that their worldview is a constructive bias and unaware of how uncompromising their worldview is. As such, inflexible jurors are challenging to identify during voir dire. You cannot simply ask them if they could find against a doctor, a corporation, or an injured plaintiff because they are completely unaware that they cannot, let alone why.

Instead, ask potential jurors questions about their view of the world. Are corporations honest? Do plaintiffs exaggerate or lie? Have you ever seen a co-worker fake an injury or disability to get out of work? Have you ever heard of a police officer arresting and charging someone with insufficient evidence? Ask jurors about their experiences and impressions of the world to get a sense of what they believe is likely and prevalent and what is rare or impossible. In criminal trials, you’ll find that some inflexible jurors are incapable of believing that a police officer could make an error in judgment, intentionally or not, or that the justice system may be flawed. Such a juror may not be able to admit it directly, but they won’t be able to cite a single example of police abuse, a false arrest, inappropriate charging of a defendant, or a single law that they would change, and you’ll find that they cannot conceive that a good person could ever commit a crime.

An even more insightful way of identifying inflexible jurors on your panel is to ask questions about your jurors' approaches to case issues. Inflexible defense jurors in medical malpractice cases are those who have never sought a second opinion, double-checked or disagreed with a doctor's diagnosis or treatment plan, or asked a doctor for alternative options or to explain his/her reasoning. Instead, they tend to follow their doctors' instructions implicitly without questioning, and their approach reveals a blind trust in doctors that suggests a worldview that doctors don't make mistakes.

The blinders that handicap inflexible jurors go far beyond the standard predispositions that every juror has. As discussed in a prior jury tip, every juror is guilty of determining what happened in a given trial on the basis of what they believe is more likely to have happened in a given situation rather than waiting for the evidence to speak for itself. For most jurors, these predispositions can be overcome with overwhelming evidence or persuasive trial presentations (although with great difficulty, so it's much wiser to remove them in jury selection). Inflexible jurors cannot be rehabilitated. They believe that certain situations are not only less likely but are actually not realistically possible. For example, there are inflexible defense jurors in auto accident cases that truly believe that a cautious, defensive driver should be able to avoid or prevent accidents in any situation; these jurors will actually construct a theory that the plaintiff was somewhat responsible for the accident without any supporting evidence.

Keep in mind that inflexible jurors are not so much a demographic group as a view of the world on a particular topic. Every juror is capable of being an inflexible juror given the right set of facts and situations, and a juror who is inflexible in one type of case may not be on a different case. Some types of jurors—conventional personality types, especially—are more prone to inflexibility, but you should treat every juror as potentially inflexible in any given case.

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