

## **November Jury Tip: “Understanding Naïve Jurors”**

When tackling a central case issue in voir dire, one of the greatest challenges is distinguishing between the opinions that shape verdict and those that do not. Whether you are trying a personal injury case, a commercial or employment lawsuit, or a serious criminal matter, choosing the topic is the easy part; narrowing your focus and knowing which questions are truly insightful is challenging. In any case, there are an infinite number of on-point, case-specific questions you could ask your jurors, but most are useless (even if interesting) in understanding your jurors’ predispositions toward verdict.

In an auto accident case, should you ask your jurors about every fender-bender, or only the serious collisions? Is it more important to understand how carefully your jurors themselves drive, how safely they believe that others drive, or how they believe that others SHOULD drive? Does it matter if they’ve been in a collision or not, and does it matter what their definitions of safe and dangerous driving are? What if they’ve been in an accident that was far worse than the collision involved in trial, and what if they’ve been both a plaintiff AND a defendant in an auto claim before? The truth of the matter is your jurors’ experiences are less important than you might think; what matters most are the attitudes left behind by these experiences. If you remember my jury tip from this past April, you’ll know jurors can interpret their experiences in wildly divergent ways, and that it is more important to understand your jurors’ attitudes and ways of viewing the world than to learn what they’ve experienced.

There are thousands of lessons I could apply this critical principle to, but for the next few months I am going to focus on a different way of categorizing jurors according to how they view the world and, in particular, the specific environment that your case involves. Over the next few months, I am going to be discussing three distinct juror types: naïve, idealistic, and cynical jurors. I’ll discuss how to identify each, how each views the world, how their biases may predispose them to favor (or disfavor) your case, and how best to persuade each.

Let’s begin with a group that I call “naïve jurors.” When you ask voir dire questions about your central case issues, naïve jurors are those that seem perfectly satisfied with the environment that your case involves. Naïve jurors in medical malpractice cases are happy with doctors and their medical care and have overwhelmingly positive impressions of builders and contractors in construction defect cases, for example. The hallmark of a naïve juror is that all is right with the world, especially in the environment your case involves. Identifying naïve jurors is relatively easy to do; they tend to have overwhelmingly positive experiences and have no complaints to express. Naïve jurors tend to appeal to both sides as prospective jurors because they come across as friendly, happy people who are easy to please and more agreeable than opinionated. As with any type of juror, however, naïve jurors can only be predisposed to favor one side, so beware of being seduced by their positive demeanor.

In personal injury cases, your “naïve” jurors are generally carefree people that have never been hurt, don’t worry about dangerous situations, and take few precautionary steps to protect themselves. In business cases, your “naïve” jurors are those that believe the business world is mostly fair and that corporations are usually honest. In employment cases, your “naïve” jurors are those whose employment experiences are overwhelmingly positive and who are satisfied, trusting, and loyal to their employers.

Naïve jurors, within the context of the central case issue, are those who have had overwhelmingly positive experiences and view the world—or the specific environment the trial involves—as safe and fair. As such, naïve jurors are in most cases predisposed to favor the defense. Plaintiff attorneys often talk themselves into keeping naïve jurors; they reason that, since this juror is accustomed to a fair employer, they will react angrily when they realize this defendant is unlike any boss they’ve seen before. In reality, naïve jurors have difficulty relating to the plaintiff’s version of the world in which employers are discriminatory, doctors make mistakes, and corporations lie and cheat. These jurors feel so much good will toward the employers, doctors, or corporations they know that they impose these positive impressions onto the defendant and assume that the defendant is equally trustworthy. Changing the way a juror views the world is incredibly difficult even with slam-dunk evidence, so it is wiser to strike unsympathetic jurors than to try to rehabilitate them.

In most cases, naïve jurors will start with the assumption that both parties are honest and competent. The only way to shake up that thinking and rehabilitate naïve jurors is to directly challenge that assumption. As long as a naïve juror’s underlying belief that the defendant is honest, competent, and well-intentioned is intact, even the strongest evidence of negligence will be ignored or excused. The defendant probably had a good reason for doing what he did, the naïve juror thinks. His choices and actions might seem strange to me, but he probably understands what to do better than I do, the naïve juror rationalizes. The best way to persuade a naïve juror is to play to his/her natural inclination to trust or to give him/her compelling reasons to distrust the opposing litigant.

Keep in mind that few jurors are naïve in every situation; a juror who may be naïve in a medical malpractice lawsuit may be cynical or idealistic (the two other types that I’ll discuss in future months) in other types of cases. What matters is each juror’s attitude and approach to the specific environment that your case involves. The comparison between these juror types is separate from categorizing jurors according to personality type and some of the other scales I’ve discussed in the past; each can be used as tools to give insight into how a juror may view your case.

*Harry Plotkin is a jury consultant in Los Angeles. Mr. Plotkin specializes in assisting trial attorneys in jury selection and crafting persuasive opening statements and trial strategies. He can be reached at 626-975-4457 and at [harry@yournextjury.com](mailto:harry@yournextjury.com).*