



## Trial Tips for a Post-Pandemic World: Persuading the Modern Jury

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Jury selection is a deceptively simple yet endlessly complex task, and is becoming increasingly intricate in the post-pandemic era. Traditional predictors of juror behavior—such as political orientation, socioeconomic background, education level, and subjective opinions of a client—are proving to be less reliable. In this evolving landscape, two new types of juror behaviors have emerged that every attorney should be aware of: Conspiracism and Safetyism. Let's delve further into what is behind the rise of these new juror profiles and discuss strategies for identifying them during the jury selection process.

### First, How Did We Get Here?

Juror sentiment underwent a dramatic shift in 2016, which became known as the "Post-Truth" era, taking its name from the Oxford Dictionary's word of that year. This period marked a notable change in public attitudes toward news and information, with a growing acceptance of rejecting facts outright. Media networks began labeling each other as sources of "fake news," accusing rivals of "brainwashing," "creating 'sheeple,'" or "inserting the narrative." This rhetoric was amplified by media personalities and politicians, who frequently echoed these sentiments in interviews and on social media platforms.

The COVID-19 pandemic further magnified this trend of information skepticism. During unprecedented periods of isolation, Americans were bombarded with a constant stream of competing narratives through 24-hour news cycles. Conflicting reports about the pandemic, the effectiveness of masks and social distancing became rampant. This was further complicated by prolific and varied reporting and social media posts on high-profile events like the George

Floyd murder, the June 2020 protests, and the Black Lives Matter and Blue Lives Matter movements. The result was a deepening public distrust of information, leading to a broader social reexamination of foundational convictions and a desire to reclaim control over information.

This shift in public sentiment has impacted jury pools. Jurors are now more politically polarized, and some exhibit a deep-rooted distrust of information. Defendants have borne the brunt of this change, as jurors increasingly rely on their feelings rather than facts when issuing verdicts. It is not uncommon for juries to disregard exculpatory evidence and find corporations liable for claims negated by scientific research from experts at agencies like the FDA or EPA. In such cases, juror deliberations are often shorter and less substantive, as jurors are less willing to engage in discussions with those holding alternate opinions.

In essence, people today hold stronger convictions and are less willing to compromise them. Identifying prospective jurors on the extreme ends of the spectrum will largely depend on the specific facts of your case. Recent research from IMS Legal Strategies has highlighted two particular types of jurors that are particularly dangerous for corporate defendants: Conspiracists and Safetyists. Understanding these profiles can be crucial in jury selection and trial strategy.



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## The Rise of Conspiracism

A conspiracy involves holding a belief that is supported by little to no confirming evidence, even when faced with significant contradictory information. While conspiracies are not new, the rate at which Americans are accepting them is increasing, which should concern trial lawyers. [Research indicates](#) that a belief in one conspiracy often leads to a greater tendency to believe in more conspiracies in the future.

Researchers from IMS Legal Strategies report that conspiracies arise from distrust toward information combined with severe uncertainty and anxiety—conditions that were rampant during the pandemic. The pandemic saw a rise in conspiracy theories, from QAnon and Pizzagate to claims that masks were government control devices. For instance, Houston pediatrician Stella Immanuel went viral for claiming hydroxychloroquine could cure COVID-19. She also claimed that ovarian cysts were caused by sex with demons.

A 2022 study by Nick Polavin, PhD of IMS Legal Strategies analyzed how the rise of Conspiracism might affect jurors in civil cases. In that online study, 258 participants were presented with a fictional case where a plaintiff alleged an FDA-approved medication caused cancer. Despite the defendant presenting scientific evidence to refute the claim, participants

who believed in conspiracies were more inclined to find for the plaintiff. The study also measured factors like the “harm moral foundation” indicator and “cognitive reflection.” Belief in conspiracies was the strongest predictor of verdict behavior, followed by a juror’s sympathetic nature and their ability to override emotion-based reasoning. Interestingly, political orientation did not significantly affect verdict behavior; far-right Republicans were more likely to find for the plaintiff compared to moderate Republicans.

Identifying a potential juror’s susceptibility to conspiracies is crucial during jury selection. Key predictors include a lack of trust in government, anti-corporate sentiment, reliance on blind facts from trusted institutions, and a low educational background. Even if such individuals become jurors, all is not lost. However, cases involving missing documents, spoliation of evidence, profit-motivated cover-ups, or government regulatory agencies are more susceptible to the negative effects of Conspiracism. Understanding these dynamics can help lawyers better prepare and strategize for trial.

## The Rise of Safetyism

In their book, *The Coddling of the American Mind*, Jonathan Haidt and Greg Lukianoff define Safetyism as an ideology that prioritizes self-perceived safety, particularly the avoidance of disagreeable ideas and information, above all other concerns. This ideology promotes the idea that companies should go to great lengths to ensure customer safety. Consequently, jurors who subscribe to Safetyism often hold unrealistic expectations about product and corporate safety standards, expecting corporations to protect against both physical and emotional harm, sometimes beyond a standard of care that the law requires.

The rise of Safetyist jurors has become more pronounced in the post-pandemic era. Drs. Jill Leibold and Nick Polavin of IMS have been studying Safetyism and juries for the last several years and have found that increasing distrust of corporations, fueled by rising prices and record corporate profits, has led to a sentiment that any harm occurring under a corporation’s watch indicates a systemic failure. Recent verdicts reflect a near zero-tolerance attitude towards corporate practices that result in harm, often siding with plaintiffs, especially in products liability or bodily harm cases.



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Identifying a Safetyist juror in the courtroom can be challenging, but doing so is crucial. Safetyists typically possess characteristics opposite to those of Conspiracists. Leibold and Polavin have found that Safetyists are often urban residents, highly educated, registered Democrats, and individuals who trust their own scientific conclusions. They also tend to be

heavy consumers of social media, podcasts, and internet news. Generally younger and more risk-averse, these jurors include those who have taken COVID-19 vaccines and boosters, aligning closely with Safetyism ideologies.

## So, What Can We Do?

First and foremost, it is important not to overreact or overthink this change in juror sentiment. Despite recent trends, general juror-behavior predictors are still relevant, and in many cases, still hold true. To best prepare for these changing trends, there are several steps all lawyers can take to better equip themselves.

### Test Your Case with Mock Jurors

With the emergence of new ideologies and evolving societal values, it has never been more critical to rigorously test your case before it goes to trial. Using mock juries can offer invaluable insights into the hidden weaknesses and unforeseen strengths of your arguments. These summarized trial presentations allow you to gauge the reactions and biases of a diverse group of individuals, providing a clearer picture of how your case might be perceived by an actual jury. By identifying potential pitfalls and areas for improvement early on, you can refine your strategies and bolster your presentation, ultimately enhancing your chances of achieving a favorable verdict. Engaging in this proactive approach ensures that you are well prepared to address any challenges and effectively communicate your narrative in the courtroom.



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### Use Simple Trial Themes and Reframe as Needed

A compelling theme is crucial for almost any case, serving as the backbone of your argument and helping to convey your position clearly and persuasively. The most effective themes not only articulate your stance in a simple and artful manner but also resonate with the core values and motivations of your jurors. For example, in cases involving allegations of pharmaceutical malfeasance, a common and powerful theme for plaintiffs is that the defendants are prioritizing “profits over people.” However, when addressing a jury pool with a Safetyist orientation, it may be necessary to reframe this narrative to align with their values. One successful strategy involved a defendant explaining that the pharmaceutical drug in question was developed as a critical tool in the fight against a serious disease, such as diabetes, thereby shifting the focus from profit motives to the noble goal of combating illness. By thoughtfully crafting and adapting your theme to the sensibilities of your jury, you can create a more relatable and convincing narrative that enhances your chances of success.

## Ask the Right Questions in Voir Dire

Voir dire is a unique and invaluable opportunity for attorneys to engage in direct dialogue with prospective jurors before the trial begins. While judges often impose strict boundaries on the extent to which attorneys can probe for potential biases, thoughtful and strategic questioning can yield profound insights into a juror's predispositions and attitudes. For instance, asking "Where do you get your news from?" can reveal a juror's political and social orientation, shedding light on underlying biases that might affect their perspective. Similarly asking a few key questions might identify a Conspiracist or Safetyist juror. For example, "Raise your hand if you strongly suspect that the FDA is bought out by big pharma," "How many of you strongly agree that the COVID-19 pandemic was manufactured by the government?" or "Raise your hand if you agree that manufacturers of a product have a duty to ensure their products are 100% safe." These nuanced understandings can be crucial in shaping jury selection and tailoring case presentations.

## Arm Your Jurors

Rather than simply instructing your jurors that they must adhere to the law, it is more effective to empower them as the ultimate fact-finders and encourage them to critically engage with the evidence presented by both sides. By framing the jury's role as one of active deliberation and thoughtful evaluation, you foster a sense of responsibility and ownership over the decision-making process. When a side not only challenges the opponent's factual theory but also invites the jury to independently assess the credibility and plausibility of each narrative, it establishes a more dynamic and persuasive argument. This approach not only respects the jury's intelligence but allows jurors to feel more confident and justified in their conclusions. Encouraging jurors to consider all perspectives and make informed decisions enhances the fairness and thoroughness of the trial, ultimately benefiting the client.



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## Connect the Evidence to the Verdict Form

Tying the evidence in your case to your jury instructions is crucial because it helps ensure that the jury understands how the facts presented align with the legal standards they must apply. By clearly linking evidence to specific instructions, you provide a roadmap that guides the jury's deliberations and aids in their comprehension of complex legal concepts. This connection also enhances the credibility of your arguments. Ultimately, this approach can lead to a more coherent and persuasive presentation, increasing the likelihood of a favorable outcome.

## Poll Your Jurors

Finally, regardless of the trial's outcome, polling your jury is essential. Even in victory, juror feedback can reveal unexpected weaknesses or areas for improvement in your presentation. In the event of a loss—an occasional inevitability—this feedback becomes even more critical. Understanding jurors' perspectives helps you identify flaws in your strategy and refine your approach for future cases. By consistently seeking and learning from juror input, you can enhance your effectiveness and better prepare for upcoming trials.

## In Conclusion

While it still appears that jurors are more strongly opinionated individually than ever, the emotionality of the pandemic has subsided, and people are becoming tired of the divisiveness in our communications. This may be a good sign that jurors will be willing to listen to others in a group setting and we can return to a respectful deliberative process. But it remains important to think about the new era of juror behavior and be cognizant of the ways in which new ways of viewing evidence can impact verdicts.

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