



## Conspiracy-Minded Jurors: A Defense Playbook

By Nick Polavin, PhD, Senior Jury Consultant, Jennifer Cuculich, JD, Senior Jury Consultant, and David Metz, Associate Jury Consultant

In the aftermath of Hurricane Helene's damage to western North Carolina, a new conspiracy theory gained traction. This conspiracy held that the federal government manipulated the weather<sup>1</sup> as Hurricane Helene hit North Carolina to (1) prevent Republicans from voting in the 2024 presidential election, and (2) seize property from residents of Chimney Rock, North Carolina, for lithium mines.<sup>2</sup> And, as the wildfires rage in Los Angeles, myriad conspiracies about the causes of this natural disaster have begun to proliferate.

Followers of current events will know, of course, that these are not the only conspiracy theories to spread in recent years. Research supports this trend: a 2022 study published in the *International Journal for the Semiotics of Law* confirmed a notable rise in conspiracy beliefs among Americans.<sup>3</sup>

The fact that more of the jury pool is engaging in conspiracy thinking is alarming many litigators. After all, when laypeople are tasked with determining a party's fate, what does their increasingly fractured reality mean for the sanctity of the jury verdict? If more and more potential jurors hold beliefs without solid supporting evidence, how does that trend affect a civil justice system that asks them to rule based only on a preponderance of the facts and the evidence before them? And, crucially, what can defense attorneys—who tend to bear the resulting disadvantage of this trend—do about it?

### How Conspiracy Beliefs Disadvantage Corporate Defendants

Early research on conspiracy beliefs and jury decision-making showed that jurors who believe in conspiracies are more likely to side with the plaintiff than the defense in civil lawsuits.<sup>4</sup> There appear to be two mechanisms at play here:

First, as supported by a 2022 study published in *PLOS One*, once an individual believes in one conspiracy theory, they become more open to believing in additional conspiracy theories.<sup>5</sup> Essentially, when someone holds a belief that lacks evidentiary support—indeed, often in the face of contradicting evidence—it means the person is relying on their gut feeling; they are putting emotions over facts. Once they internally permit that way of thinking, their emotions begin to lead in future decision-making.

Such jurors may be less likely to hold the plaintiff to their burden of proof, instead following their emotions to a verdict. Those emotions tend toward sympathy for the plaintiff, anger toward the defendant and distrust of corporations more broadly.

Second, conspiracy beliefs frequently involve large, powerful entities that have harmed or deceived powerless people. In the world of civil litigation, narratives like those align well with common claims against corporate defendants.

### **Conspiracy-minded people share some common thought patterns.**

It is important to first understand conspiracy-minded jurors to determine how damaging they may be for a particular case—and how to convince them, if that becomes necessary.

As explored in Stephan Lewandowsky and John Cook's *The Conspiracy Theory Handbook*, first published in 2020, there are some consistent thought patterns among people who believe in conspiracies. For instance, they will cherry-pick information that fits their narrative and ignore or dismiss that which contradicts it. Indeed, contradicting evidence is often cast aside as the byproduct of deceptive, "official" sources. Outlets such as mainstream media and academia are deemed to be complicit in the conspiracy itself, working to help hide the "truth" from the public.



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Frustratingly but tellingly, even if certain beliefs manage to become indefensible to the conspiracist, that reckoning does little to affect "their overall conclusion that 'something must be wrong,'" as noted by the handbook.<sup>6</sup> In their search to fit the world to their narrative, conspiracy believers also reinterpret randomness—there are no coincidences. They seek ways to connect the dots, to the point of tagging completely unrelated events as further proof of the conspiracy.

As Lewandowsky explained in an interview with *Scientific American*, this search for order is motivated by some of the same feelings of powerlessness and anxiety that draw people to conspiracies in the first place: "People can assume that if these bad guys weren't there, then everything would be fine. ... Whereas if you don't believe in a conspiracy theory, then you just have to say terrible things happen randomly."<sup>7</sup>

Lastly, conspiracists believe that the people and groups behind the supposed conspiracies have nefarious intentions. As a result, they generally position themselves both as victims of the conspiracy and as being among the small set of potential heroes who are in the know and can stand up to the conspirator.<sup>8</sup>

### **What is the effect on jurors?**

One can see how such thinking can be hazardous for a corporate defendant in a case brought by an individual or family of an individual who died or was seriously harmed. As a juror prone to conspiracism might perceive it, there is a corporation with nefarious intentions, there are victims, and they can be the hero by righting the wrong. Although the defendant may have solid evidence, that juror may pick and choose the evidence supporting their narrative and dismiss the corporate representative's testimony, along with the defense experts or government agencies whose findings and opinions the juror believes have been bought.

The result? In a case where the US Food and Drug Administration evidence supports the safety of a defendant's medication, conspiracy-minded jurors may believe that the FDA is a revolving door for corporate interests. In a case where the US Environmental Protection Agency has deemed a chemical exposure safe, conspiracists could think it is because corporate lobbyists have convinced the EPA to raise acceptable risk levels. And in a case where spoliation is not even at issue, conspiracists might still interpret any missing documentation as evidence of a cover-up.

### **Jury Selection: The First Line of Defense**

Eliminating those who hold conspiracy beliefs from sitting as jurors—i.e., stopping the problem before it starts—is the ideal strategy for civil defendants. It is important to identify the conspiracy-minded jurors and try to get them dismissed before they can risk affecting the deliberations and trial outcome.



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But how do you identify conspiracy-minded jurors? It would certainly strike the panel as odd to be asked if 5G towers are harmful, if airplane exhaust contains mind-control chemicals, or if there has been a covert government takeover of land in North Carolina. The following techniques are less blatant but quite effective.

#### **Examine social media.**

People, particularly those who believe in conspiracy theories, tend to be very honest on social media—or at least more forthcoming than in *voir dire*. Where allowed, attorneys should investigate the social media accounts of the venire to identify jurors who believe in conspiracies. That might include potential jurors who have followed pages, posted, or shared posts about, for instance, the government controlling the weather, election fraud, or the Earth being flat.

### Ask related questions.

Research has shown that distrust in institutions is significantly associated with conspiracy beliefs. That is, people who have a negative opinion of corporations and do not trust government agencies—such as the Centers for Disease Control and Prevention, EPA, FDA, or Occupational Safety and Health Administration—tend to be more prone to conspiracy beliefs.<sup>9</sup>

Therefore, ask questions about corporations and government agencies relevant to the case. These questions are especially predictive of conspiracy-minded jurors if they are phrased alongside a related conspiracy. For instance, you might ask:

- Who here believes that pharmaceutical executives take jobs at the FDA to dismantle regulations?
- Who believes the EPA is bought out by large corporations to ensure companies can keep making profits on harmful products?
- Who believes that companies usually destroy evidence of their wrongdoing?

### Maximize cause challenges.

Although believing in conspiracies is not usually grounds for cause, the same jurors often hold strong anti-corporate views that can lead to cause challenges. Once you identify these jurors, whether from social media, a juror questionnaire, or voir dire, target them with cause sequencing questions—every cause challenge granted is like getting an extra peremptory strike.

## When You Cannot Strike Them All

Given how widespread conspiracy beliefs are, most jurisdictions offer inadequate strikes to remove all conspiracy-minded prospective jurors, and defense counsel may not obtain enough cause challenges to make up the difference. Therefore, if a corporate defendant ends up with some conspiracists in the box, it will be important to consider and implement strategies to try to convince these jurors.



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A great deal of psychological and communication research has looked at how to change the attitudes and beliefs of those who engage in conspiracies. The bad news is that it is a tough road with no guarantees. However, several strategies may help.

### “Pre-bunk” conspiracies.

Research indicates that heading off conspiracies and misinformation—referred to as “inoculation”—can be effective.<sup>10</sup> For defense purposes, that means inoculating against the

conspiracy that the plaintiff will likely present or imply. This can be achieved at the end of voir dire by preconditioning jurors to focus on context and credibility regarding the facts of the case.

For example, consider asking the following questions:

- It is possible that the plaintiff's lawyers may take a number of documents out of context. Is everyone willing to be on the lookout for those types of tactics?
- Are there any of you who do not think it is important to know what the history or context of a conversation was or what was said in response?
- Both sides are entitled to a jury that listens closely to the evidence and makes decisions based only on real proof and on credible evidence and witnesses. This means that the plaintiff must prove with credible evidence that [the defendant company] was negligent and that the company really caused the plaintiff's injury in a substantial way. Does anyone have an issue with what I just described?

Defense counsel can follow up in opening statements by pointing out a few examples where the plaintiff's lawyers took something out of context, giving jurors reason to approach the plaintiff's case-in-chief with greater skepticism.

### **Foster an analytical mindset.**

Encouraging people to think critically appears to be the most effective protection against conspiracies.<sup>11</sup> This includes not only prompting jurors to analyze evidence carefully, but also guiding them, where possible, on how to evaluate information.



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In instances where jurors have reached a defense verdict, one common piece of post-trial feedback is that the jurors did not feel like the defense attorney and witnesses were trying to persuade them, but rather that the attorney and witnesses taught them the science and law behind why the defendant did not cause the plaintiff's injury. As such, witness preparation work should encourage experts not merely to give their opinions, but to teach the jury—through concise and familiar language—how to evaluate specific evidence.

### **Approach the jury as a fellow seeker of information.**

Be careful not to suggest to jurors that they are wrong, ignorant, or ridiculous if they hold certain views. People often assume that if they can supply enough information to refute the claims of a conspiracist, surely the conspiracist will see the light. This assumption denies the inherent irrationalities of conspiracism and the deep-seated need conspiracists often have to cling to their beliefs.

Instead, adopt a more inquisitive tone as a seeker of the truth alongside them.<sup>12</sup> By posing questions and providing guidance on how to think through the answers, defense attorneys can lay the breadcrumbs to help jurors reach the proper conclusions on their own.

### **Tell a complete, thematic, and bounded story.**

The tried-and-true strategy shown to be impactful in a variety of settings—from trials to political campaigns, public health campaigns, and marketing—is storytelling. Research has shown that a compelling story leads to greater attention to the message,<sup>13</sup> greater acceptance of the message,<sup>14</sup> and less counterarguing against the message.<sup>15</sup>



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Storytelling, organized around memorable, repeatable themes, not only provides information in a digestible format, but can also give jurors an emotional drive to find for the defendant. To whatever extent possible, defense attorneys must help jurors feel good about a defense verdict: show how the defendant goes above and beyond for safety; show that plaintiffs have ulterior motives; remind jurors that justice is for defendants, too. Moreover, be careful to detect and fill gaps in your story and witness testimony so that jurors have fewer opportunities to substitute their own biases and assumptions.<sup>16</sup>

Researchers have posited that conspiracists' reflex to push back against evidence may increase when that evidence challenges "ideas that define their worldview or sense of self," as Melinda Wenner Moyer wrote in *Scientific American*.<sup>17</sup> Thus, as an element of the defense story, counsel should also limit the scope of what jurors understand they are there to consider and decide.

Defendants need not try to convince jurors that every corporation means well, for example, only that the facts, evidence, logic, and motivations point to this corporation behaving appropriately in this case.<sup>18</sup> Counsel can even state up front that the plaintiff's story of callous corporate greed probably sounds familiar, like something straight from a movie or flashy headline, but that a trial is a search for truth, wherever that leads.

## **In Conclusion**

Conspiracy-minded jurors give in to some alarming thought fallacies that tend to favor plaintiffs in civil lawsuits between individuals and corporations. As a corporate defendant, it is best to try to ensure such jurors do not end up on the jury.

However, if the venue renders that goal unlikely, keep in mind that a defense case solely reliant on trying to counter the plaintiff's claims is unlikely to be successful. Trial preparation should aim instead to negate conspiracist inclinations by pre-bunking, teaching the jury how to analyze the facts, and developing a strategic story that invites jurors to discover the truth with you.

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