

DEFENSE POINTER

If the case involves emotionally charged photographs or video, ask permission for the venire to see those during jury selection and follow up with questions about who would be uncomfortable serving. Looks at reactions.

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Do's and don'ts...

- Don't just ask if someone is emotional
- Do determine whether someone appears to be emotional

Don't Cry for Me, Jury... Really, Don't!

Would you describe yourself as an especially emotional or sympathetic person? (Please circle one.) Yes or No

Yes or No, that's it. Choose one. No "maybe's," no "sometimes," and no "it depends." Just yes or no....

Think about it. How would you answer this? Keep in mind that this is only one of many other personal and unique questions that jurors must answer on a jury questionnaire. But what exactly does it mean? Who isn't emotional? How much thought would you give it before answering?

This question, in some form or fashion, has appeared on most of the supplemental juror questionnaires that I have seen. It usually allows only a "yes or no" response without room for follow up. Sure, the question is common, but what does it really tell us?

I decided to put this question to a test. I asked it on a background questionnaire that I used in two wrongful death cases with almost 50 mock jurors. I also asked mock jurors why they would or would not describe themselves as emotional.

Some mock jurors expressed frustration with this question, as is sometimes the case when it is asked on a juror questionnaire. Some wrote:

- "No, I'm a robot."
- "Yes, and I am incapable of rational thought!"
- "Who isn't emotional?!?"

(See page 2.)



Asking whether someone is emotional means different things to different people.

How Do I Spot Emotional Jurors?



People tend not to be very good at accurately describing themselves in a few words. This is especially the

case in a courtroom where many want to present themselves as being fair.

It's okay to ask how people categorize themselves, but don't stop there. Consider the following in determining whether someone appears emotional:

- (1) Would this juror tend to identify as a "victim?"
- (2) Are there emotional or helping components to this person's job or volunteer work?
- (3) Has this juror experienced a recent personal or professional loss?

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Following are some of our most popular presentations:

- (1) Jury Selection—Rating Jurors and Identifying Leaders
- (2) Digging Deeper in Voir Dire—Techniques and Tactics that will Best Open Up the Venire
- (3) Developing Jury Questionnaires—Pointers for Making the Most out of your Questionnaires
- (4) Witness Preparation—Identifying and Addressing Concerns with Your Witnesses
- (5) Opening Statements and Closing Arguments—Develop Persuasive Themes for Your Openings and Arm Your Advocates in Your Closings.

Don't Cry for Me, Jury... Really, Don't (Continued)

Guess what we found? Statistically, jurors who identified as being emotional were no more likely to find for the Plaintiff than those who said they were not especially emotional.

Few identified as being “especially emotional,” so we rephrased the question to simply ask, “Would you describe yourself as an emotional person.” Many more people endorsed this question, but again, it was not predictive of verdict outcome.

Asking whether a juror would describe himself or herself as emotional is a valid question. I still keep in on my juror questionnaires, but it is not as telling as many would think. The most telling part of my question

came from the open-ended responses. That is, we learned much more about each mock juror when they explained why they would or would not view themselves as emotional.

Some described circumstances that would be particularly emotional for them. Several said that they would be very emotional if the case involved the death of a child. A couple of other individuals described their own personal losses. Those individuals tended to be among the most emotional jurors. They were statistically more likely to find in favor of the Plaintiffs.

Ask whether jurors are emotional, but follow up. Why? What is going on in their lives? General questions about emotionality are fine. Just don't forget to follow up!

