***JURY DESELECTION***

***How to Identify and Eliminate the Worst Jurors for Your Case***

## BE YOURSELF

***UNLESS you can’t listen or you are just an absolute and complete asshole, be yourself.*** If you are not genuine, if you are not yourself, a jury will not trust you enough to talk to you. Find and approach that fits your personality.

## But…Shut up!!

If you don’t ***LISTEN***, they won’t keep talking. If you are talking they can’t talk and you don’t learn anything about them. That means you can’t get a challenge for cause and you won’t be able to effectively use your peremptory challenges.

## GET THE RIGHT FIT FOR YOUR CASE

* One size DOES NOT fit all.
* Although cases with the same defense have many things in common, EACH CASE IS UNIQUE.
* You must prepare PRECISE questions.
* Yes, more than one.
* You *WANT* an audience that is WILLING to ACCEPT your theory and themes.
* You will not get one.
* You *NEED* to get rid of the people that are MOST UNWILLING to ACCEPT your theory and themes.

## GOALS

* Identify and rate the jurors who will ***NOT ACCEPT*** YOUR THEORY OF INNOCENCE or your THEMES
* Eliminate the worst for cause
* Exercise peremptory challenges effectively by logically evaluating who presents the most obstacles to accepting your theory of the case
* Rehabilitate and empower jurors that WILL accept your theory and themes

## HOW TO IDENTIFY AND RATE

* NO STEREOTYPES
* OPINION PROVOKING QUESTIONS SPECIFIC TO YOUR WORST FACTS
* SLIDING SCALE QUESTIONS

## STEREOTYPE AT YOUR PERIL

* They are not who you think they are until they talk to you about your theory, your theme and your bad facts.
* Don’t assume anything about a person by the way they look. Ever been attracted to someone you saw and changed your mind after they opened their mouth?

## PROVOCATIVE QUESTIONS-CONVERSATION STARTERS WHAT ARE YOUR WORST FACTS?

***(These are general examples. Your questions MUST BE CASE SPECIFIC.)***

## LOOKING FOR THE YES!

* **SELF DEFENSE:** Who thinks it is never OK to shoot an unarmed man? Do people have a duty to try to avoid violence before they use force against another person?
* **SNITCH:** It is OK for the government to pay witnesses for their testimony or make deals with them? It is necessary?
* **ID:** Who believes eye witness identifications are reliable? Who feels like that is enough to convict someone without anything else if the witness is very sure.
* **NO INTENT:** Who thinks that people should always be held responsible for their actions regardless of their mental state? Who thinks people use insanity as an excuse? Is it a legal loophole?
* **SAOC:** Who thinks children don't lie about being sexually assaulted?
* **COPS:** Who feels a police officer is more likely to give an accurate account than someone else? Would you tend to believe a police officer over a non- police officer?
* **DV SPOUSE ABUSE:** Who thinks that a man should NEVER hit a woman? Who believes that if a man has hit a woman before he will do it again? Who believes that women don't lie about being hit by a man?

***SLIDING SCALE-Logical basis for peremptory challenges***

"Some People" believe it is never OK to shoot an unarmed man... "Others" believe it is OK to shoot someone if they threaten someone in any way...

Agree? How strongly? Disagree? How strongly?

Where do YOU fall on that continuum?

**Agree**…..Understand why.....Similar experience…..Don’t understand…..**Disagree** 3----------------2----------------1-----------------0---------------1---------------2 3

***LISTEN AND FOLLOW UP (Loop the good stuff)***

### REMEMBER BAD IS GOOD

* + Who, what, when where, how, ***why***?
	+ *Repeat juror statement,* ***WITH APPROVAL****, and develop...*
	+ *Tell us more Explain…*
	+ *Reasons for feelings/beliefs?*
	+ *Firmness of belief; Religious?*
	+ *How long have you felt this way?*
	+ *Do your family and friends share those feelings?*
	+ *Emotional triggers?*
	+ *I am NOT going to change your mind.*
	+ *No one is going to convince you to change your mind.*
	+ *You are not likely to ignore that feeling?*
	+ *Is it fair to say it (Could/Would/Will) be hard for you to put those feelings aside in this case?*

## BAD IS GOOD. DON’T TRY TO MAKE IT BETTER DO NOT QUALIFY THE BAD WITH THE GOOD

* + - Well what about if…? This is not time for you to hear what makes you feel good. When the juror says they hate your theory move on. You will not change their mind.
		- Do not put a target on the backs of the jurors favorable to your case. You are just doing the prosecutor’s job for them.
		- If it becomes clear the prosecution will kick a juror favorable to you, let the juror educate the jury. BRIEFLY
		- This does not accomplish your goal.
		- You are wasting valuable and limited time
		- KEEP YOUR EYE ON THE PRIZE

## YOUR JURORS ARE NOT BIASED OR PREJUDICED

### They have:

* *High moral standards*
* *Strong ethical code*
* *Principles they will not be forced to compromise*
* They will not blindly follow orders if they conflict with their personal beliefs and their value system. (NAZI GERMANY)

## ELIMINATION

1. Challenges for cause: Baby Steps

Change questions from open to gentle leading questions. “Tell me more” “Would it be fair to say…?”

1. The James Brown philosophy of challenges for cause; Sayin’ it and doin’ it is just two different things. Make the impairment case specific.

### GREAT IDEA BUT HOW WOULD YOU FEEL ABOUT DOING IT IN THIS CASE?

*PROOF BEYOND A REASONABLE DOUBT*

* + **PREPONDERANCE** - 51% - *More likely than not*-***$$$***
	+ **CLEAR AND CONVINCING** - *HIGHLY PROBABLE*-***Unfit Parent***
	+ **B.R.** - SO CONVINCED YOU COULD ACT WITHOUT HESITATION IN A MATTER OF IMPORTANCE TO YOURSELF-***Criminal conviction***

Man is accused of killing his wife.

* A jury finds that the insurance company does not have to pay because it is

*more likely than not* that he killed his wife.

* Another jury finds that he is an unfit parent because, although there might be some other logical or reasonable explanation for all the evidence, it is still *highly probable* that he killed the children’s mother.
* That is all we know…

Who feels that highly probable should be enough? Who thinks he is guilty? Who wants to convict him? Do you really need more evidence? Would you worry about setting him free? Who feels like he should have to prove something to you in order for you to find him not guilty?

### How about in this case where Jo Bob is charged with??? How do think you’d feel in this case?

***REHABILITATE AND EMPOWER THE JURORS YOU LIKE***

* Make DA use peremptory challenge
* Object to rehabilitation by judge as coercive. (WADRYH)
* Rehabilitate after judge or DA attempt to establish cause.
* Empower to Hold out or Hang
* "What's your favorite color?” Don’t have to explain feeling of Doubt.
* Stand up for others to hold out or hang.

***RACE Getting the conversation started***

* **Direct** – What do you think when you hear someone say, “He’s playing the “race card”? When someone uses the “N word”? Why do we feel so uncomfortable even saying the word?
* **Heroes** – “I love my grandfather very much but he was raised in the South and he had some very negative attitudes about black people.”
* **Proxies** – Jesse Jackson once said while walking down the street in Chicago he heard footsteps of people running up behind him. He said when he turned around he was relieved to see the people running behind him were white. Does that surprise you?
* **Self-Disclosure** – I was raised in Texas where I was taught not to trust Mexican people. Although I know it is not logical I still find myself afraid to trust someone because of the way they look.
* **Race flipping** – What if a loved one of yours was charged with a serious crime and you knew they were innocent. At the trial everyone except he or she is black. Judge, jury panel, prosecutor, even her lawyer are all black. But every one of them says they can be fair and not consider race at all. How would you feel? Feel like she was going to get a fair trial. Why?
* **Current events/Issues** – Do we still need affirmative action; is it time to say enough is enough? / Some people think the Confederate flag should not be flown at any government buildings while others think it is freedom of speech. What do you think?
* **Provocative Quotes (literature, Constitution, Family) –“We** hold these truths to be self-evident. That all men are created equal… “ That statement did not include black people when it was written. Do you think it is true for black people today?

# LET GO OF THE URGE TO BE IN CONTROL.

***GO WITH THE FLOW…. SEE WHERE IT TAKES YOU AND ENJOY THE RIDE!***