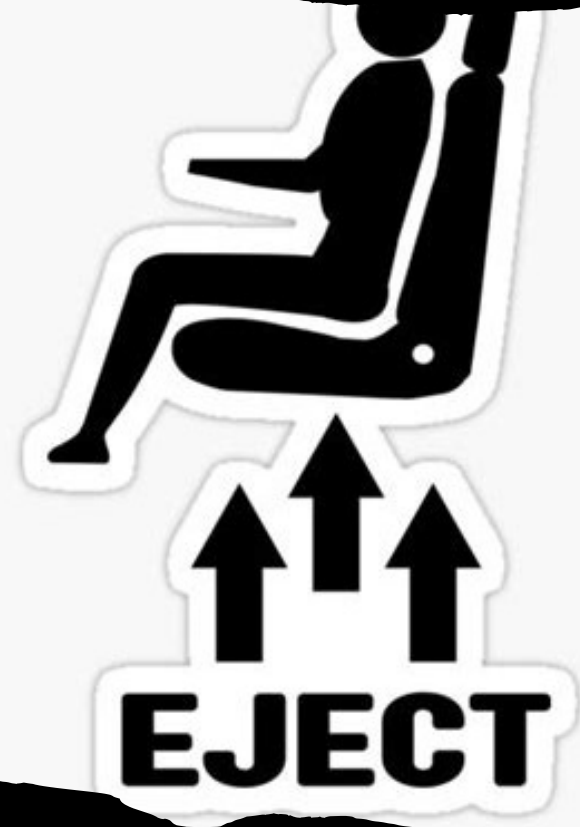


# Deselection...

## ...Saying Bye to the Haters

Martín Antonio Sabelli  
NACDL Voir Dire College 2026



# Three Theories of Voir Dire

**Education – Persuade (change) jurors to fit your TOC.**



**Profiling – Identify and eliminate jurors closed to your TOC by making assumptions about them based upon demographics.**



**Deselection – Acquire information about candidates to identify & strike jurors hostile (closed) to your TOC, your client, your client's rights.**





JUROR NO. 1: I'm aware of the defendant and I hate him.

JUROR NO. 1: I think he's a greedy little man.

JUROR NO. 18: Both of my parents are on prescriptions that have gone up over the past few months, so much that they can't afford their drugs. I have several friends who have H.I.V. or AIDS who, again, can't afford the prescription drugs that they were able to afford.

THE COURT: These charges don't concern drug pricing. Could you decide this case based only on the evidence —

JUROR NO. 18: No. No.

THE COURT: — presented at this trial and put aside anything you might have heard in the media?

JUROR NO. 18: No. No.

THE COURT: The purpose of jury selection is to ensure fairness and impartiality in this case. If

THE COURT: These charges don't concern drug pricing. Could you decide this case based only on the evidence —

JUROR NO. 18: No. No.

THE COURT: — presented at this trial and put aside anything you might have heard in the media?

JUROR NO. 18: No. No.

JUROR NO. 18: Both of my parents are on prescriptions that have gone up over the past few months, so much that they can't afford their drugs. I have several friends who have H.I.V. or AIDS who, again, can't afford the prescription drugs that they were able to afford.

THE COURT: These charges don't concern drug pricing. Could you decide this case based only on the evidence —

JUROR NO. 18: No. No.

THE COURT: — presented at this trial and put aside anything you might have heard in the media?

JUROR NO. 18: No. No.

JUROR NO. 40: I'm taking prescription medication. I would be upset if it went up by a thousand percent. I saw the testimony on TV to Congress and I saw his face on the news last night. By the time I came in and sat down and he turned around, I felt immediately I was biased.

THE COURT: Sir, we are going to excuse you. Juror Number 47, please come up.

JUROR NO. 47: He's the most hated man in America. In my opinion, he equates with Bernie Madoff with the drugs for pregnant women going from \$15 to \$750. My parents are in their eighties. They're struggling to pay for their medication. My mother was telling me yesterday how my father's cancer drug is \$9,000 a month.

THE COURT: The case is going to come before you on evidence that you must consider fairly and with an open mind.

JUROR NO. 47: I would find that difficult.

THE COURT: And that's based on your parents' experience with medication?

JUROR NO. 47: It's based on people working very hard for their money. He defrauded his company and his investors, and that's not right.

THE COURT: Ma'am, we're going to excuse you. Juror Number 52, how are you?

JUROR NO. 52: When I walked in here today I looked at him, and in my head, that's a snake — not knowing who he was. I just walked in and looked right at him and that's a snake.

THE COURT: We will excuse Juror Number 52. Juror Number 67?

JUROR NO. 67: The fact that he raised the price of that AIDS medication, like, such an amount of money disgusts me. I don't think I'll ever be able to forget that. Who does that, puts profit and self-interest ahead of anything else? So it's not a far stretch that he could do what he's accused

JUROR NO. 70: I have total disdain for the man.  
many children —

THE COURT: Would those feelings prevent you from being fair to both sides in this case?

JUROR NO. 70: I can be fair to one side but not the other.

JUROR NO. 77: From everything I've seen on the news, everything I've read, I believe the defendant is the face of corporate greed in America.

JUROR NO. 77: You'd have to convince me he was innocent rather than guilty.

JUROR NO. 125: I understand that, but I already sense the man is guilty.

and a brother with multiple sclerosis. I think somebody that's dealt in those things deserves to go to jail.

THE COURT: Just to be clear, he's not being charged with anything relating to the pricing of pharmaceuticals.

JUROR NO. 125: I understand that, but I already sense the man is guilty.

I don't think I can because he kind of looks like a dick.

The only thing I'd be impartial about is what prison this guy goes to.

JUROR NO. 144: I don't think I can because he kind of looks like a dick.

THE COURT: You are Juror Number 144 and we will excuse you. Come forward, Juror Number 155.

JUROR NO. 155: I have read a lot of articles about the case. I think he is as guilty as they come.

THE COURT: Then I will excuse you from this case. Juror Number 10, please come forward.

JUROR NO. 10: The only thing I'd be impartial about is what prison this guy goes to.

THE COURT: Okay. We will excuse you. Juror 28, do you need to be heard?

JUROR NO. 28: I don't like this person at all. I just can't understand why he would be so stupid as to take an antibiotic which H.I.V. people need and jack it up five thousand percent. I would

JUROR NO. 59: Your Honor, totally he is guilty and in no way can I let him slide out of anything because —

THE COURT: We will excuse you. Juror 41, are you coming up?

JUROR NO. 41: I was looking yesterday in the newspaper and I saw the defendant. There was something about him. I can't be fair. There was something that didn't look right.

THE COURT: All right. I'm going to excuse you. Juror Number 59, come on up.

JUROR NO. 59: Your Honor, totally he is guilty and in no way can I let him slide out of anything because —

JUROR NO. 59: And he disrespected the Wu-Tang Clan.

JUROR NO. 59: And he disrespected the Wu-Tang Clan.



# The Challenge of Jury Selection

To get people who believe that they are fair-minded and reasonable to reveal deep-seated values (opinions, prejudices, and biases) which they may not want to acknowledge directly and which they may not know they have.

....so that you can send their sorry \$%^&\$ home now rather than trying to change who they are in 44-162 seconds of courtroom interaction.....





let angry jurors  
talk now ... not  
later...



**CROSS JUROR  
CONTAMINATION  
DOES NOT HAPPEN**



---

**Building Rapport Through R-E-S-P-E-C-T**



Why work through the excruciating pain of learning deselection?

How to develop the questions we ask to identify the haters?

How to interact in court with candidates to maximize honesty, openness, and sincerity?

How to strike haters for cause?

How to deselect for racial bias?

## *creating the questions well before trial*

Identify  
Problem  
Attitudes

Identify the attitudes, opinions, and values **not** consistent with your TOC.

Draft  
Questions  
Haters Want  
to Answer

Draft short, visual, easy to understand questions that those with those values **want** to answer using hater language.

Choose Your  
Frame

Choose a frame for delivering the question.



Identify Problem Attitudes

Education/  
False Confession

Deselection/  
False Confession

The police know how to  
break down young,  
vulnerable kids.

No one, even a youth,  
would confess to murder  
unless s/he did it.

# Education

Even acknowledging the amount of sexual violence in our world and the way women have been treated by the police and in the courts, we should understand that women can fabricate accusations of sexual abuse for any number of reasons.

# Deselection

Given the amount of sexual violence in our world and the way women have been treated by the police and in the courts, we should believe/start off believing any woman who shows the courage to speak out about being abused.

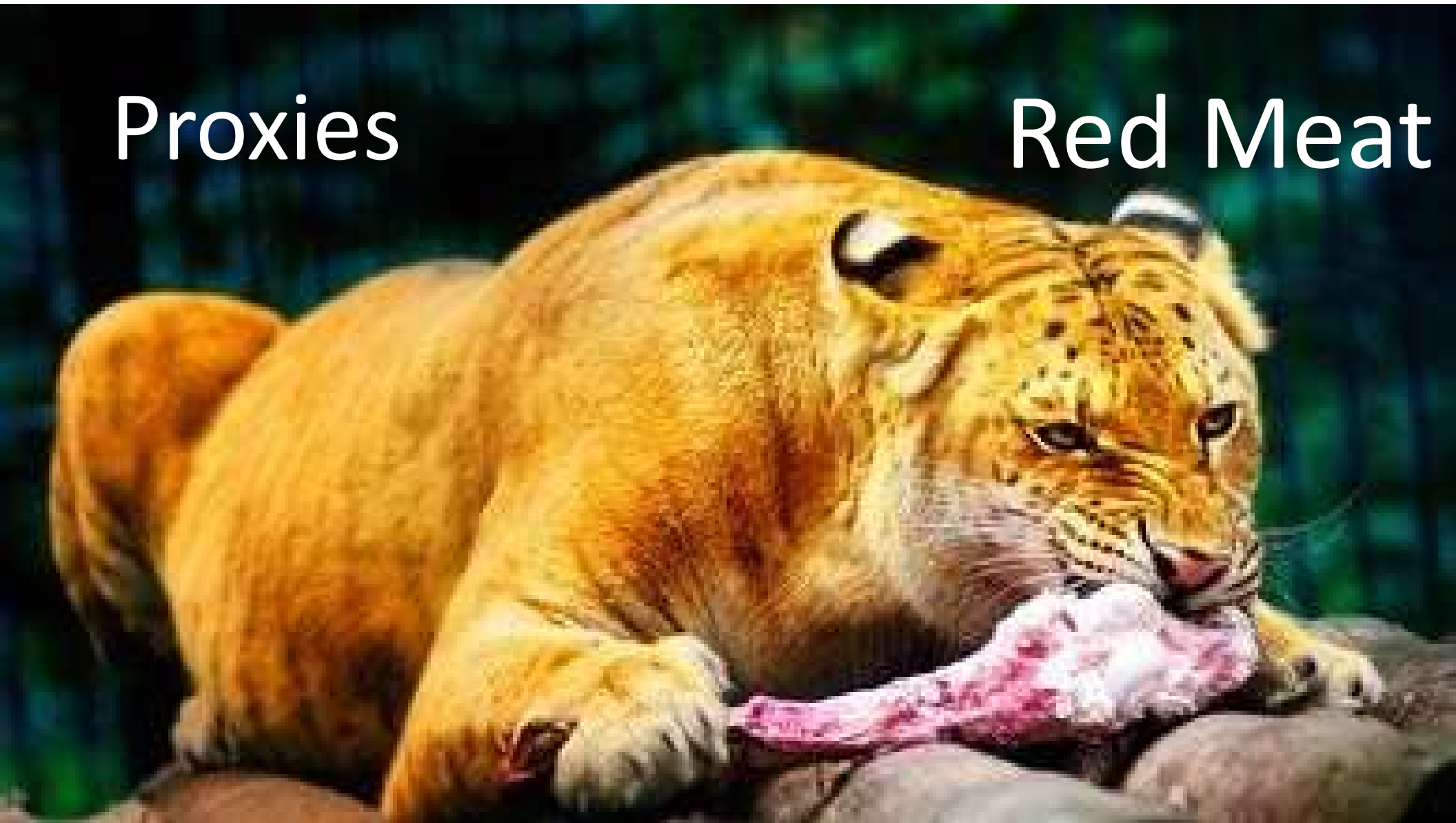


**Confront ugly facts (priors, bad acts, gang status, tattoos, confessions, etc)**

**Identify Problem Attitudes**

Proxies

Red Meat



# Theme flipping to find the attitude to deselect

It's not like the old days. Women who really suffer abuse have lots of options for help, protection, and support.

Athletes play by their own rules when it comes to sex.

If you sell drugs, you are ready to do just about anything to make a buck.

Draft Questions Haters Want to Answer

**Speak with the ear of the other.**

**Use the language that the hater would use in the questions.**

**Design questions using the bad/worst answers you can imagine.**





## Using Hater Language

Use Hater Language



---

**How many of you  
feel that people who  
come to our country  
ought to learn  
English?**

**How many of you  
feel that we have a  
big problem with  
illegal aliens and  
crime?**

Draft Questions Haters Want to Answer



**“Who here feels that letting trans athletes compete just isn’t right?”**

Use Hater Themes



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# Story (Visual) Questions Inviting Disqualification

A man walks out his front door in the middle of the day with a loaded AK-47 under pea coat. Who here feels that's all you need to know that he had the intent to kill once he walked out his front door?

You will learn that Client committed a robbery with a loaded firearm five years ago just down the block from the one in this case. Who here feels that he's going to have to show you something to convince you that he did not commit this one?

You are going to hear that my client had his four-year old in the backseat when he was stopped with drugs. Is there anyone here who might have a tough time getting past this fact to decide whether he knew he had drugs in the car?

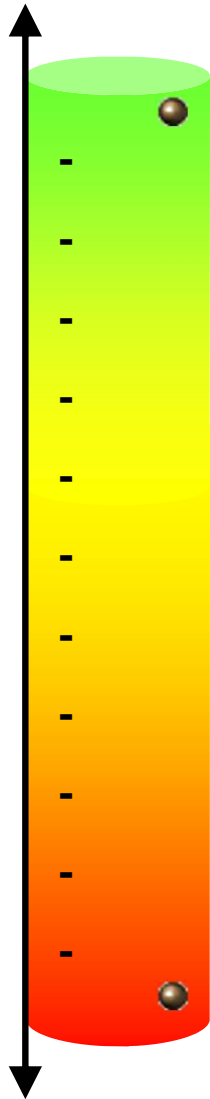
## Elements (why these work as a deselection questions)

They name the opinion/value openly so jurors who hold it will self-identify.

They ask whether they can set the opinion/value aside, which is the legal standard for cause.

They invite jurors to disqualify themselves.

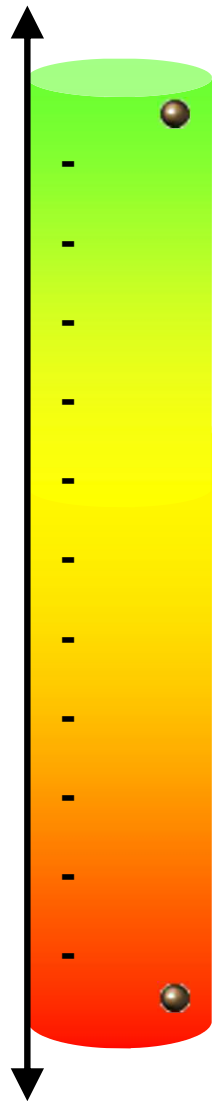
## Close-Mindedness Scale



**No young woman would report a rape – knowing that she will attacked and humiliated in the media and in the courtroom – unless she was telling the truth.**

**'Teenagers [teenage girls] have lots of reasons to make up stories.**

## Close-Mindedness Scale



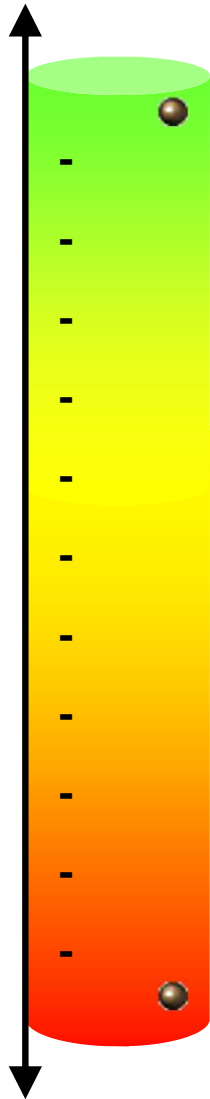
**Wannabe gang members are ready to do just about anything, like rob or even kill, to get in.**

**.**

**.**

**Some kids are just looking for community/looking to belong when society and families fail them.**

## Close-Mindedness Scale



**People who sell marijuana are just as dangerous as any other drug dealer maybe worse because it is the gateway to...**

**.**

**.**

**It's just weed, dude.**

**.**

Identify Problem Attitudes

# attitudes about the justice system

People who believe that not testifying means you are guilty as sin.

People who believe that police officers are more honest or honorable.

People who believe that the system favors guilty people.

Identify Problem Attitudes

## high- authoritarians

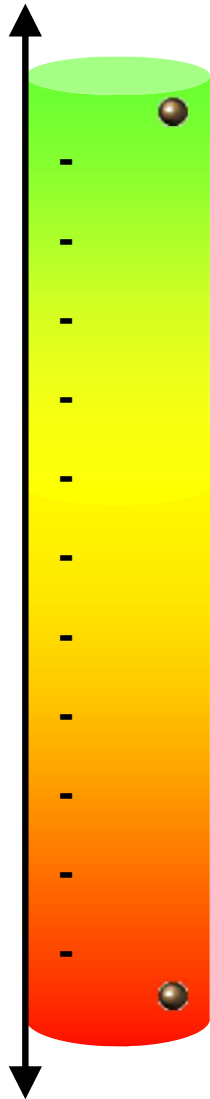
Seems like these days criminal have more rights than the rest of us.

If a case gets this far, defendant must have done something/is probably guilty.

The system makes it too hard for the prosecutors to convict guilty people.

Police officers have tough jobs and are treated very unfairly by the society and the press.

## Close-Mindedness Scale



**If someone doesn't testify, they must have something to hide.**

- 
- 
- 

**People have all sorts of reasons to feel nervous about testifying in a case like this.**

Choose Your Frame

## Frame Options

Skewed Survey (how many people feel/would agree....)

Spectrum (some people feel X and some people feel y)

Self-disclosure (I feel ....)

**Choose Your Frame**

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**Some people feel [X]**

**Other people feel [Y]**



**In Court/Finding  
Your Inner Oprah**

# Finding Your Inner Oprah



**INTRO**



**USE OPEN-ENDED  
QUESTIONS**



**LISTEN ACTIVELY**



**RESIST THE URGE  
TO BE BRILLIANT**



**CHOOSE FEELING &  
NON-JUDGMENT  
WORDS**

# introduction

Explain that there are no right or wrong answers.

Emphasize the need for honesty and candor.

Commit to being respectful.

Acknowledge that we all have strong feelings on one issue or another.

## Conversational – your tone not the objective





## *listen actively & without judgment*

---

**Use Open-Ended Questions.**

**Actively Listen/Use Gentle Prods (last four words).**

**Physicalize your interest.**

**Speak Plainly (Avoid Legalese).**



**Do You  
Agree?**

# Drill Down to Identify:

---

Understand Fully the  
Value/Attitude/Opinion/Worldview

---

Identify the Bases/Source/Foundation  
of the Value

---

Determine the Strength/Intensity of  
the Value



## **words matter**

**Use emotion words/"feel" not "think."**

**Never use judgment words/"fair, impartial, etc."**

**Avoid "why" questions.**

**Never talk down/lecture.**





**peel away the  
layers**

- **Tell me more**
- **Tell me more**
- **Tell me more**
- **Tell me more**
- **Tell me more**



Please tell me more about that.

Please help me understand that.

Please explain what that means for me.

Can you give me an example?

What was your reaction?

What made you feel that way?

How do you think that affected you?

Tell me about an incident that comes to mind.

**How will this feeling factor in/affect you if you sit on this jury?**

**Is there any particular reason you feel that way?**

**Did something happen that helped you come to that conclusion?**

**How strong is your belief/opinion about that?**

**How long have you felt/thought that?**  
**Do your family and friends share that feeling?**



**Never argue with, cut-off,  
or “finish” the thoughts of  
a juror.**



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## **exploiting “bad” answers**

**Thank and praise the juror for their honesty.**

**Then SPREAD/LOOP that answer (e.g., “How many of you agree with Ms. Díaz?”)**

# Assess the Intensity (To Best Use Your Strikes)



## **Assess strength of attitude**

Attitude versus  
misconception



## **Detect by self- reference**

“Scaling”



## **Detect by reference to others**

“Comparing”

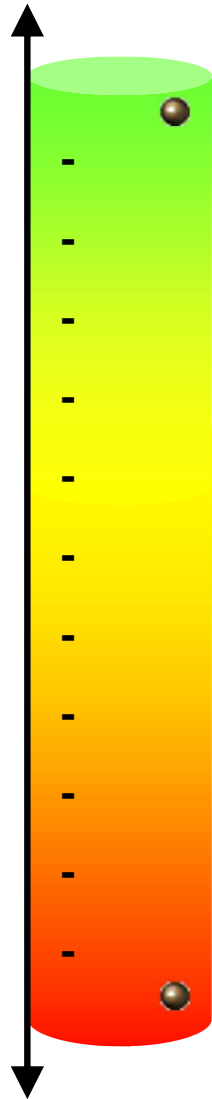


## **Detect by behavior or changes in behavior**

# JURORS BEHAVIORS NOT THEIR BELIEFS MATTER MOST

SOCIAL SCIENCE NOW TELLS US  
THAT A PERSON'S BEHAVIORS ARE  
MORE PREDICTIVE THAN THEIR  
STATED BELIEFS

## Close-Mindedness Scale



**We should take keys away from a friend who has been drinking.**

- 
- 
- 

**People should make up their own minds about their ability to drive.**

# Sources of Information re Candidates

Backgrounds What life factors do jurors have (e.g., their occupations, educational background and training, socio-economic status, media viewing habits and internet footprint and usage, among other background characteristics) may affect their decisions in the case?

Experiences What experiences do jurors bring (e.g., being a victim of a crime or involvement in prior lawsuits) that may affect how they view the case?

Attitudes, Opinions, Beliefs, and Values What values will serve as the framework or filter through which the jurors will view the case. *Nonverbal cues fit here.*

# Reading Nonverbal Cues



Pay attention to the juror's nonverbal communication including signs of anxiety and general positive or negative affect.



Look for deviations in the potential juror's behavior.



Look for such visual cues as body movement, body orientation, body posture, shrugs, eye contact and facial expressions.



Look for auditory cues, including voice pitch, tone, vocal hesitancy and word choice.

# REHABILITATION SCRIPT

USE CLOSED ENDED QUESTIONS – DO NOT GIVE THE JUROR AN OPPORTUNITY TO BURY THEMSELVES

You don't know any of the people involved in this case, do you?

You don't have any direct knowledge of what happened here, do you?

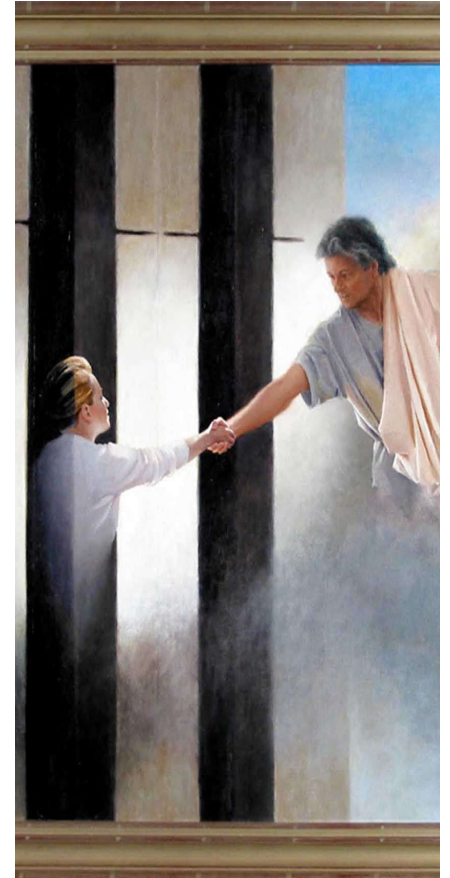
You consider yourself a fair-minded person, don't you?

You'll listen to both sides, won't you?

And follow the judge's instructions?

And decide this case based only on what you hear in court, won't you?

So even though you have this (personal experience/attitude), you can put this aside and decide this case based only on what you hear in court and in accordance with the judge's instructions, isn't that right?



**striking for cause**





EPIC FAIL

Not for the weak of forehead

[motifake.com](http://motifake.com)



**striking for cause**



# Deselection

Ask Open-Ended  
Deselection  
Questions

Drill  
Down on  
Potential  
Strikes

**Open-Ended,  
Conversational,  
Information Gathering**

Identify  
Potential  
Strikes



# Moving Toward Cause

Ask Open-Ended  
Deselection  
Questions

Drill  
Down on  
Potential  
Strikes

Obtain  
Agreements re  
Attitudes

Identify Potential  
Strikes

Identify Potential  
Cause Challenges

Use open-ended questions until you decide to move toward cause. Once you make this decision, shift to very soft cross using only the answers obtained through open-ended questioning and nonverbal cues.

## Mirroring/Obtaining Agreements Using Their Language

---

“you cannot promise us at this point that your experiences will not affect you later in the case even if you try”

“you might have difficulty in putting aside your feelings about people who don’t choose to tell their side of the story.”

“prosecutor might have a head start if my client doesn’t testify even if you try to talk yourself out of it.”

“agree that if your son or daughter were charged it would be unfair to have you sit on the jury.”

**Then follow up on each option with “even if the judge asks/instructs you to.....”**



## Mirroring/Close the Circle

“.... even if the judge instructs you to....”





changes the conversation.

**“[Diverse juries] had longer deliberations, greater focus on the actual evidence, greater discussion of missing evidence, fewer inaccurate statements, fewer uncorrected statements, and greater discussion of race-related topics.”**

**Sommers**

## Percentage of death sentences imposed

*DePaul Law Review, 2004*





wiseGEEK

# Racism Proxies

How many of you think that defense lawyers like me play the race card to get our clients off?

How many of you think that people who come to our country ought to learn English?

How many of you think that we have a big problem with illegal aliens and crime?

# Racism Proxies

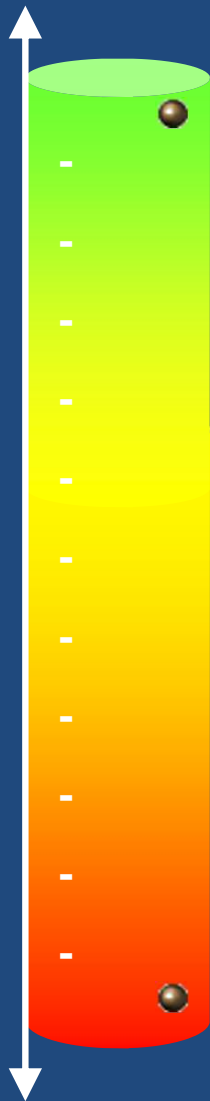
Let's talk about race. Some people feel that you have to talk about race to really get at the truth. Others feel that lawyers like me talk about race when our clients are guilty. How many of you feel that the truth is closer to the latter – lawyers using race as a strategy/to muddy the waters?

About a month ago, the City Council required the OPD to erase its gang database because some people complained about a few mix-ups. Lots of other people were really concerned about that. How many of you can understand their concern?

How many of you here have never been to the Mission District?

How many of you avoid the Mission if you can?

## Close-Mindedness Scale



Inner city culture is largely responsible for teenagers joining gangs.

- 
- 
- 

Unequal income across generations has created social problems including gangs.



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## PRE-HAB & REHAB SCRIPT



[ONLY CLOSED ENDED  
QUESTIONS – DO NOT GIVE THE  
JUROR AN OPPORTUNITY TO  
BURY THEMSELVES]

You don't know any of the people  
involved in this case, do you?

You don't have any direct knowledge of  
what happened here, do you?

You consider yourself a fair-minded  
person, don't you?

You'll listen to both sides, won't you?

And follow the judge's instructions?

And decide this case based only on what  
you hear in court, won't you?

So even though you have this (personal  
experience/attitude), you can put this  
aside and decide this case based only on  
what you hear in court and in  
accordance with the judge's instructions,  
isn't that right?

**Take The Pledge**





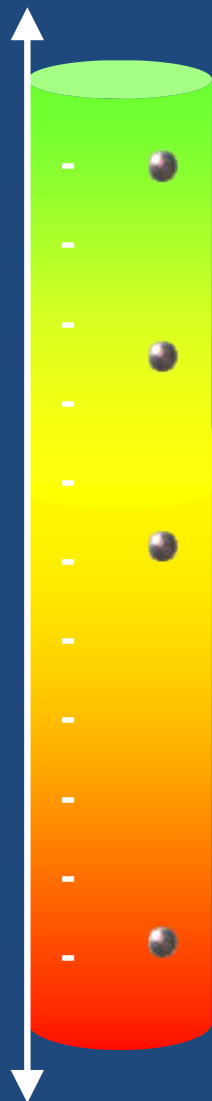
EPIC FAIL

Not for the weak of forehead

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## Narrow the Focus



“Strongly Agree”

“Would Understand”

“Might Understand”

“Strongly Disagree”

**Strikes**

**Neutrals**

**Keeps**



## CREATING THE QUESTION II

Identify values inconsistent with:

- Your TOC
- System values
- Your evidence

**EXPERIENCE  $\neq$  VALUES**

but might **generate**  
values.....

**Focus on values not experiences**

# Objections Investigation Discovery

No which questions go to cause

# Specific Motions

- **More Peremptories**
- **BLM**
- **Negative Interactions with Law Enforcement**
- **Jury Instruction or Certification re Bias**

```
graph TD; A[Open ended questions] --> B[Used in Counselling and Interviews]; A --> C[Detailed answers]; A --> D[Encourage Creative thinking]; A --> E[Thoughtful answers];
```

**Used in  
Counselling and  
Interviews**

**Detailed  
answers**

**Open ended  
questions**

**Encourage  
Creative  
thinking**

**Thoughtful  
answers**

# Add

- How to do cause before judge
- Always go for cause