

Let's Get Real:
Getting Jurors to Reveal Bias and
Admit They Can't Be Fair

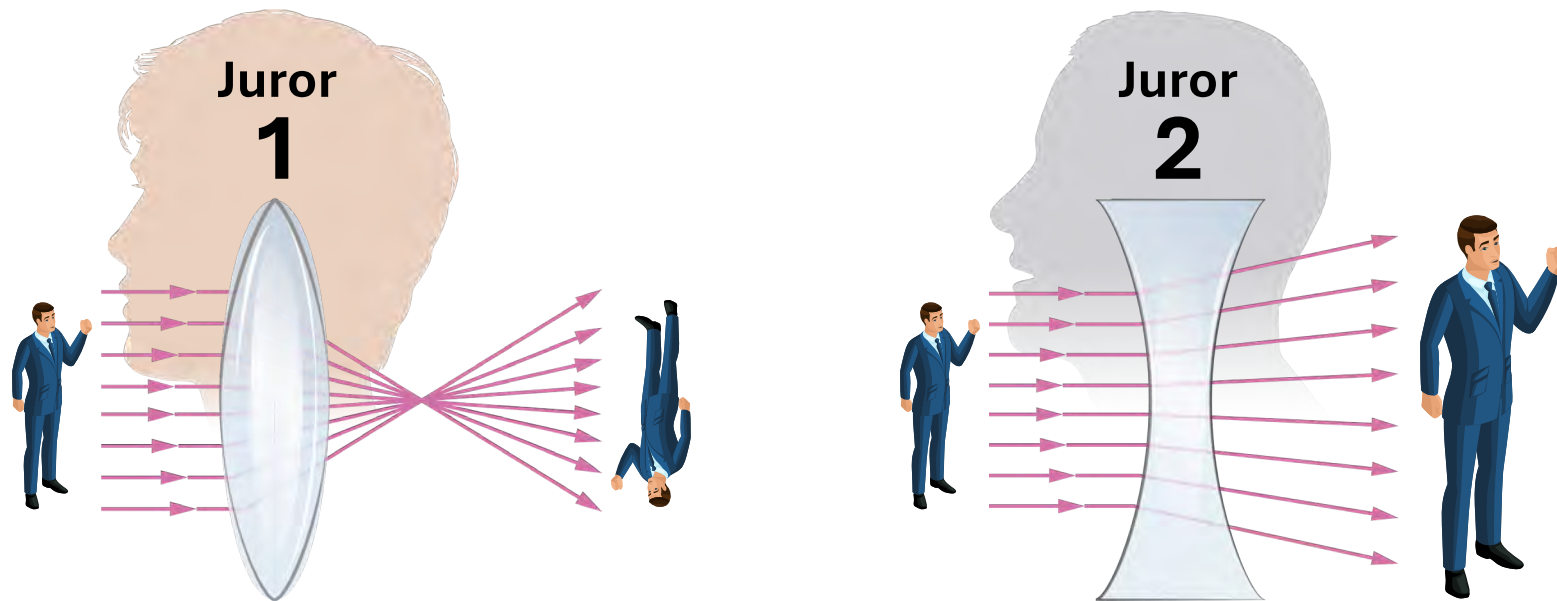
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Jury Selection Psychology: It's All About Perspective

Confirmation Bias:

The tendency to interpret new evidence as confirmation of one's existing beliefs or theories.



Jurors will filter evidence, interpret ambiguities, and fill in the gaps with their life experiences and attitudes.



Jury Selection Psychology: It's All About Perspective

What was your reaction to the defendant's alleged "document loss" or "destruction of documents"?

Juror #1 – "That one, I thought that was fine."

Juror #2 – "It seemed a little suspicious, but I wasn't sure if it was 100% intentional."

Juror #3 – "It was horrifying that they were being destroyed...there was no way in hell you should be destroying any type of record because you have to have a paper trail if there's a recall."

What were your impressions of the attorneys for plaintiff?

Juror #3 – "I thought he was very good...he explained everything from the beginning ...and then at the closing, he did the same thing. So, he just wrapped everything up in a nice package for us, as much as he gave what he was able to give that day."

Juror #2 – "They were fine I think."

Juror #1 – "They were dicks, but they were good at their job. I mean, they were just so rude to the defense lawyers."



Remember: Largest Predictive Factors for Verdict Outcomes

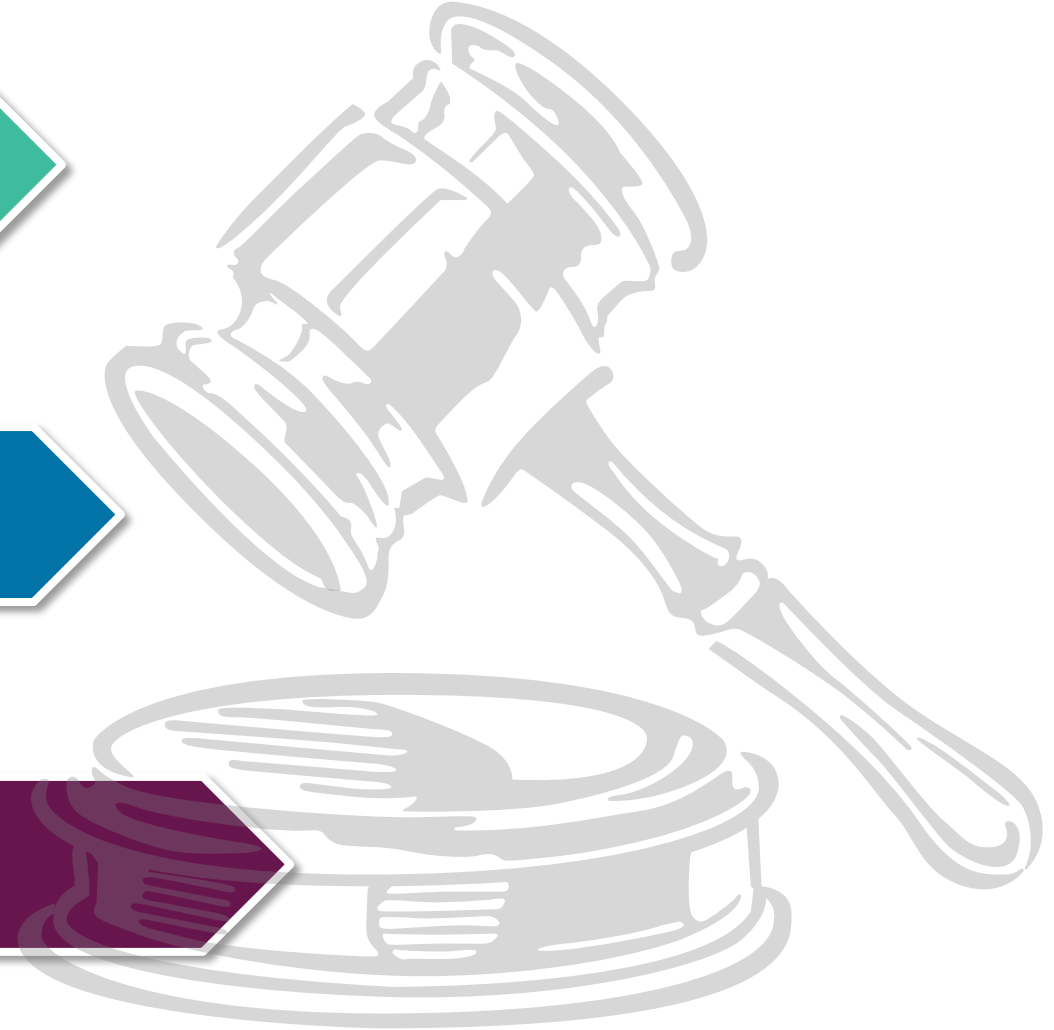
1 Attitudes/Opinions/Beliefs

...which tend to correlate with:

2 Experiences

...which sometimes correlate with:

3 Demographics





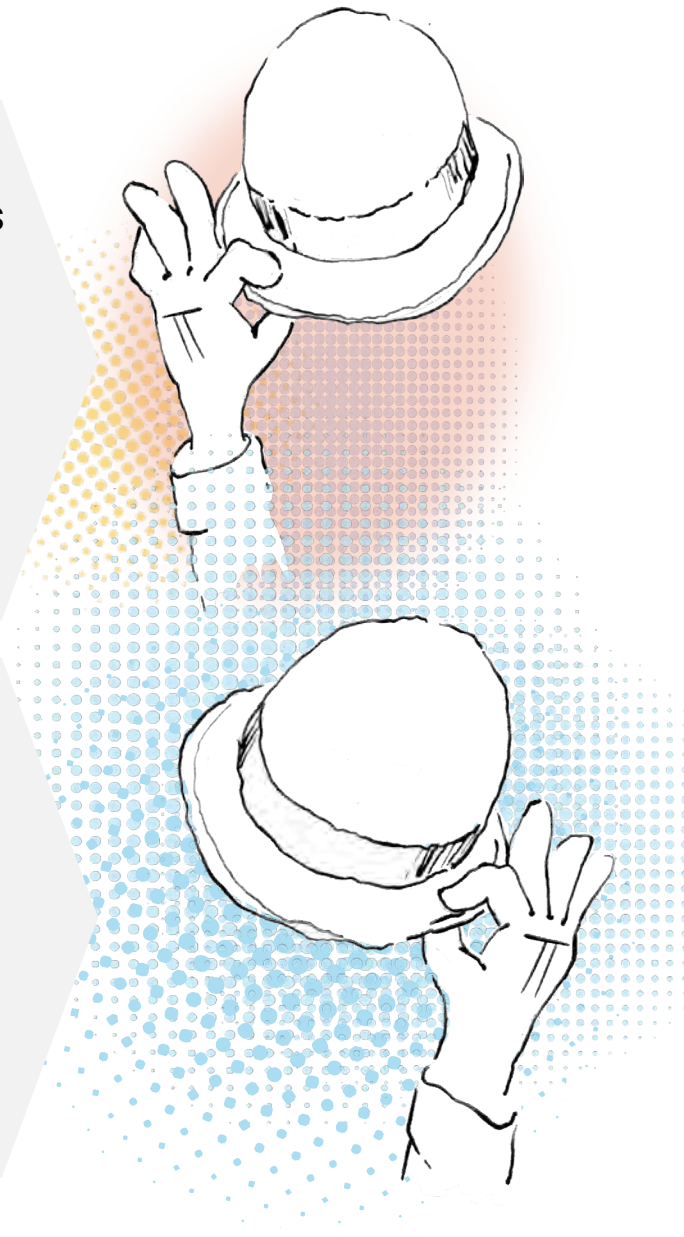
Generalized Juror Profiles

Plaintiff- leaning jurors tend to be:

- Liberal (though Democrats can go either way)
- Education – liberal arts, psychology, humanities, performing arts
- Helping professions
- Idealistic – challenge the status quo
- External locus of control (environment determines outcome)
- Health/wellness conscious
- Entitled/complainers/resentful
- Believe people need to help one another – seller be fair

Defense- leaning jurors tend to be:

- Republican/Conservative
- Education – hard sciences, business, finance
- Analyzing professions – black and white thinkers
- Practical, rule-followers, trust in government/regulations
- Internal locus of control (the individual determines the outcome)
- Hard workers/conscientious/grateful
- Cynical of most people
- Believe people need to look out for themselves – buyer beware



Voir Dire: Key Principles

1 | Be a good representative

Q: Anything else you'd like to share about your experience as a juror?

A: "...there was someone on Company X's side that was in the crowd that was intentionally trying to sabotage Company Y's closing arguments. She was intentionally squeaking her chair and coughing the whole time. At break, a handful of us actually individually went to the bailiff on our own to ask if she could step in. And the bailiff started listening and saw what she was doing and had to go talk to her. I thought it was really distasteful."



Voir Dire: Key Principles

2 | Preview weaknesses

- ✓ “Throw” your statement of the case
- ✓ Reserve your strong points
- ✓ Preview your weaknesses
- ✓ Vanilla statement of the case



Voir Dire: Key Principles

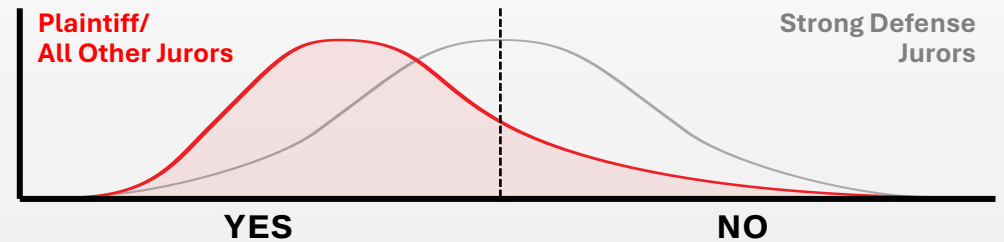
3 | Ask the right questions

“Hide Your Keeps”



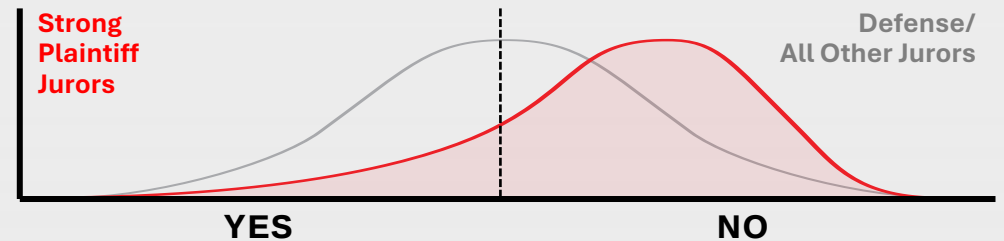
BAD Question Construction--

“Do you believe companies prioritize profits over safety?”



GOOD Question Construction--

“Do you believe most corporations put profits over the safety of consumers?”





Voir Dire: Key Principles

4 | Rehab your best jurors

- Q: So, your father was on the board of directors at a big company?
- Q: Do you believe all companies are the same?
- Q: Do you agree some companies and the people who run them make mistakes or exercise poor judgment from time to time?
- Q: Beyond recognizing the name of the company, do you have any special connection or know people there?
- Q: Will you judge the witnesses who testify in this case by what they say here in the courtroom, rather than based on some general opinion you companies?
- Q: Can you set aside whatever general feelings you may have and judge this case on its merits?
- Q: If the plaintiff proves its case against the defendant, could you find in their favor and award what you think is fair and reasonable compensation?
- Q: The court will give you certain instructions as to what laws you should apply. Will you be able to follow those laws despite any general opinions you may have?
- Q: So, will you be able to give a fair shot to all parties involved? Thank you.

“I’ll Try”



Voir Dire: Key Principles

5 | Eliminate, then indoctrinate



The Value of Preconditioning

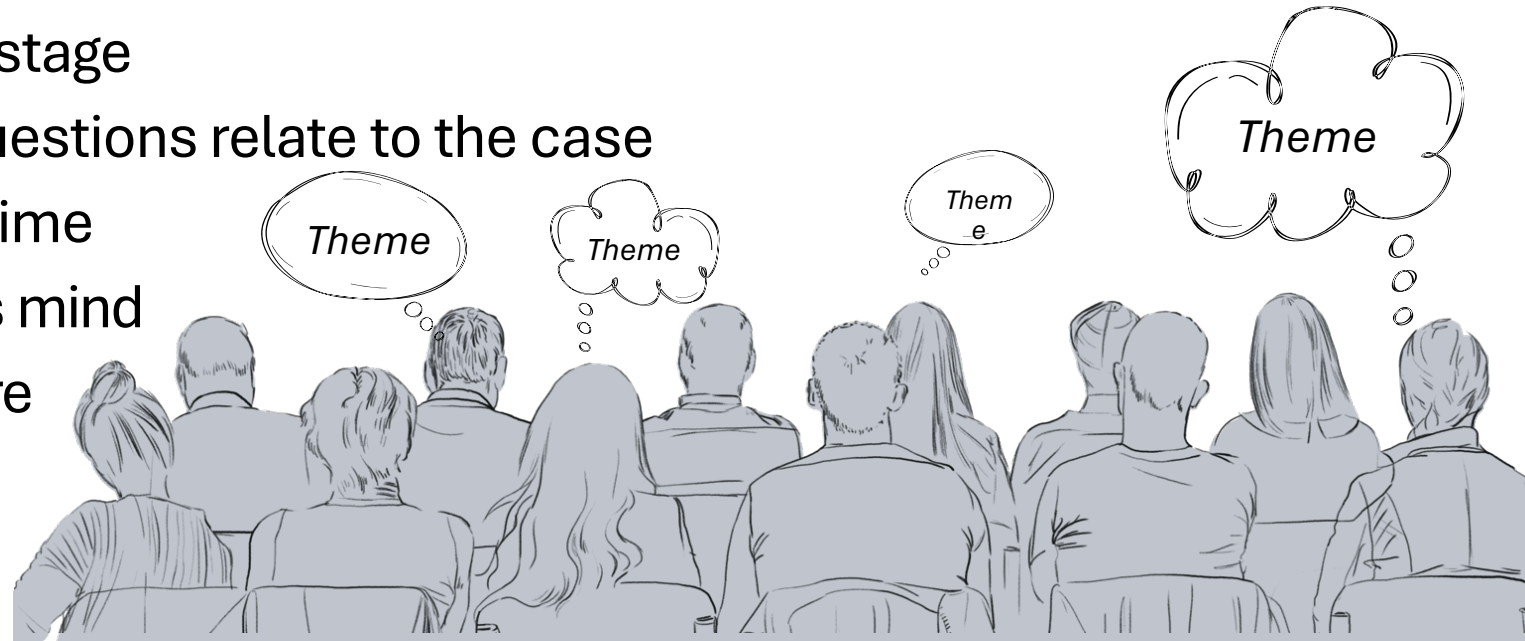
Instill themes, plant your perspective, seek commitments

- **Priming: The power of suggestion**

- When the exposure to an argument or position influences a response

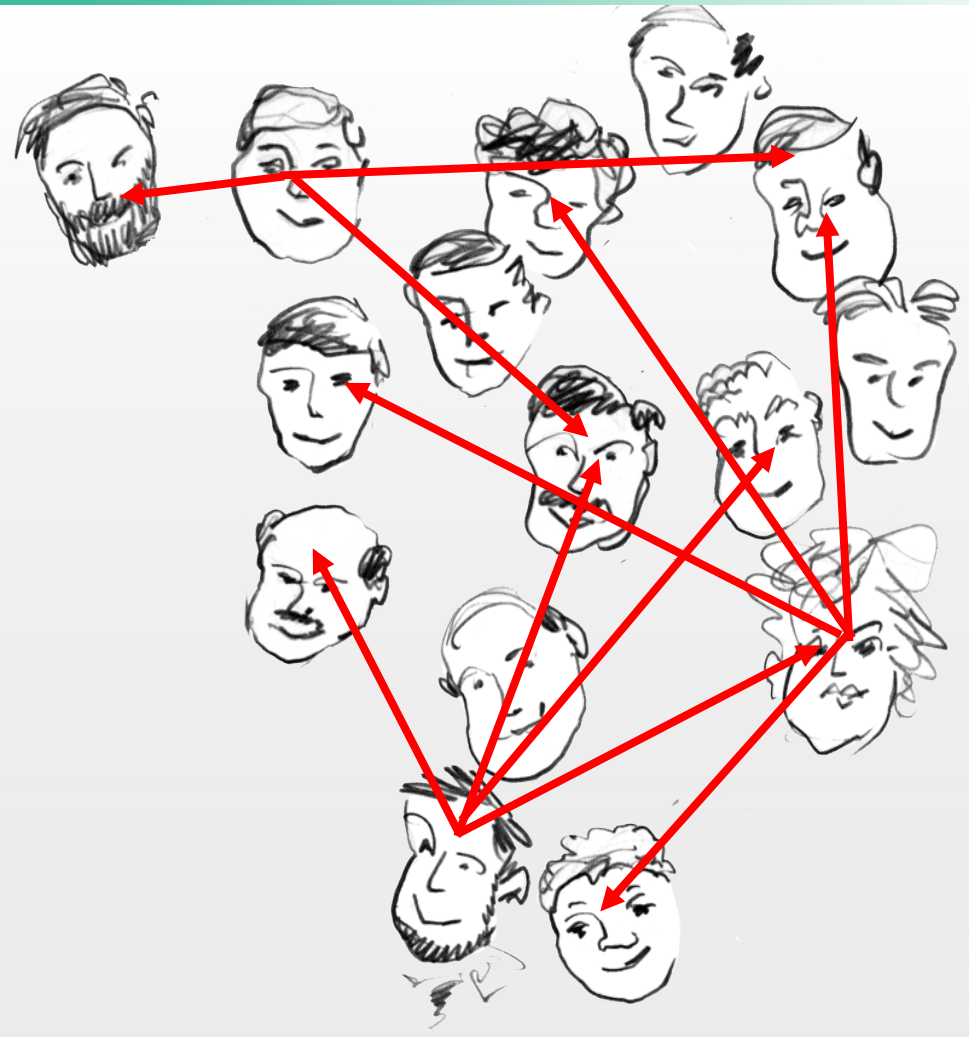
- **Does it work on juries? . . . *Not really***

- Jurors aren't invested at this stage
- They don't know how your questions relate to the case
- Effects of priming fade with time
- It's hard to change someone's mind
- Time is better spent elsewhere
 - getting rid of your bad jurors



Voir Dire: Key Principles

6 | Anticipate group dynamics

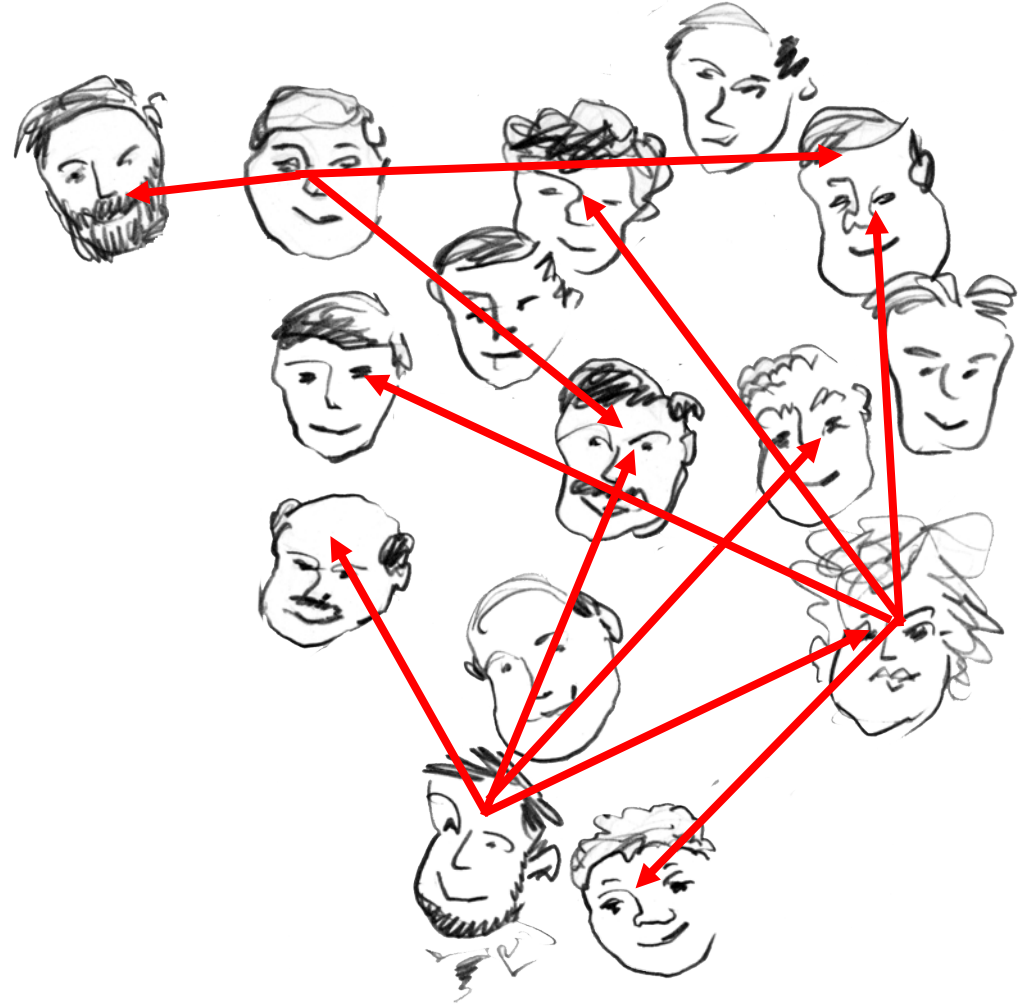


Anticipate Group Dynamics

How are jurors interacting with one another?

Is anyone standing out in a good or bad way?

Who is asking questions and showing interest?





Voir Dire: Key Principles



7 | Do your research

You Can Learn A Lot From What People Post Online

Emil DiBello shared a link
September 11 · magquiz ·



Can You Pass The Common Sense Test?

Online quiz that tests your common sense to succeed

Emil DiBello
August 5 ·

My son- "our internet is broken"
My wife- "did you complete your work?"
My son- "at least there was internet"
Got to love this new generation of technology spoiled kids

Share

Emil DiBello
April 29 ·

Put on a pair of gloves to put air in your tires
as a man

Emil DiBello
January 5 ·

If your working today don't whine about how
able to keep your family warm and sheltered

Emil DiBello shared Fantastic things in the world's video.
25 hrs ·



You Can Learn A Lot From What People Post Online



Ritt Maria shared Ride or Die's photo.
4 hrs · 🌐

" Before you start to judge me, step into my shoes and walk the life you get as far as maybe you're strong I read

Unknown

Don't know if I earned it



Ritt Maria shared Crazy Boss Bitches's photo.
45 mins · 🌐

AFTER A BREAKUP, THE



Ritt Maria

October 25 at 1:20pm · 🌐

Im so sick of being stressed, tired, pushed pulled arguing enough is just enough with this shit.

AND DEALS WITH THE DAMAGES UNTIL HEALED. THE OTHER ONE IS ALREADY IN ANOTHER RELATIONSHIP.

You Can Learn A Lot From What People Post Online

Q89. Have you ever heard of Monsanto?

☒ Yes

☐ No

Q90. If yes, what are your impressions of Monsanto?

☐ Positive

☒ Neutral/No Opinion

☐ Negative

Q91. Please explain:

They make products for gardening

You Can Learn A Lot From What People Post Online

 Russell Walker
January 24, 2015 · 🌐

**12 Ways
to Drive GMOs
and Roundup
off the Market**



STOPSTOPSTOPSTOPSTOP

GENETIC

ENGINEERING

GENETIC

ENGINEERING

GENETIC

ENGINEERING

 Millions Against Monsanto by OrganicConsumers.org · Follow
January 23, 2015 · 🌐

Monsanto's toxic chemicals are saturating the planet. It's bad for the environment, and it's bad for us. Ready to rid the world of toxic pesticides and GMOs? Ch... See more

1

Like Share

 Russell Walkervia The Mind Unleashed
May 18, 2014 · 🌐

Here is a simple, printable list of companies that use Monsanto products:



MONSANTO

"Control the food supply, and you control the people."



THEMINDUNLEASHED.ORG

Printable List of Monsanto Owned "Food" Producers

In light of the recent public anger over the Monsanto Protection Act, here's a simple, printable...

4 3 shares

Like Share

You Can Learn A Lot From What People Post Online



You Can Learn A Lot From What People Post Online

 **Russell Walker**
June 19, 2012 · 🌐

49 other countries require the labeling of Genetically Engineered foods! Why not in the US??? Monsanto!!!

YOUTUBE.COM

Bernie Sanders Goes After Monsanto
June 14, 2012 C-SPAN <http://MOXNews.com>

👍 2 1 comment

👍 Like ➦ Share

 **Russell Walker**
May 2, 2013 · 🌐

WTF!?!

ACT.ROOTSACTION.ORG

RootsAction | Investigate Monsanto's Takeover of USDA
Tell Congress to act now. Take Action with @Roots_Action

👍 Like ➦ Share

 **Russell Walker**
October 17, 2011 · 🌐

looks like we'll be shopping a lot more at local farms...

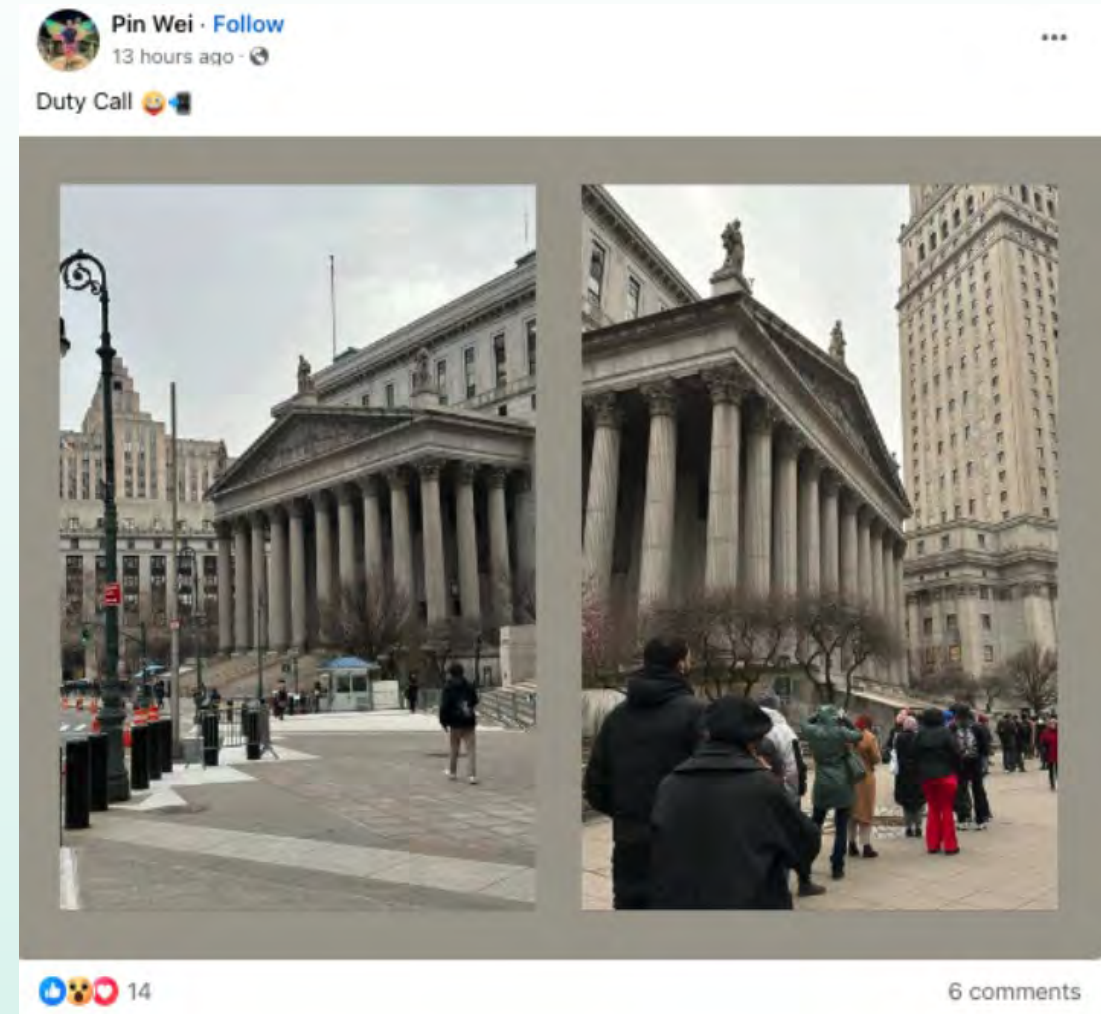
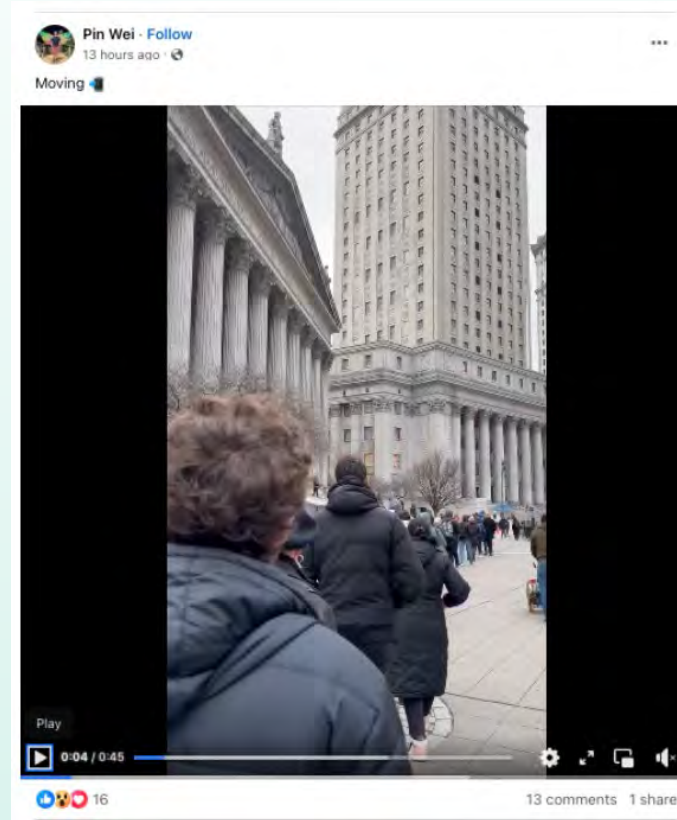
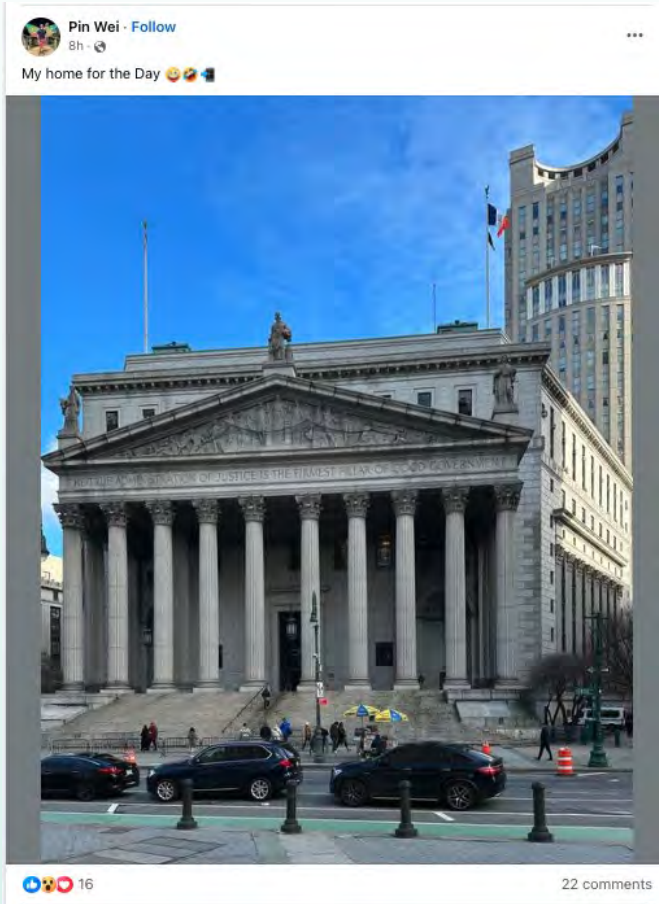
FOODFREEDOM.WORDPRESS.COM

Organic Elite Surrenders to Monsanto: Whole Foods Market okays GMO coexistence
By Ronnie Cummins Organic Consumers Association "The policy set for GE alfalfa will most likely guide policies for other GE crops as well. True coexistence is a must." - Whole Foods Mar...

👍 1 1 comment

👍 Like ➦ Share

You Can Learn A Lot From What People Post Online

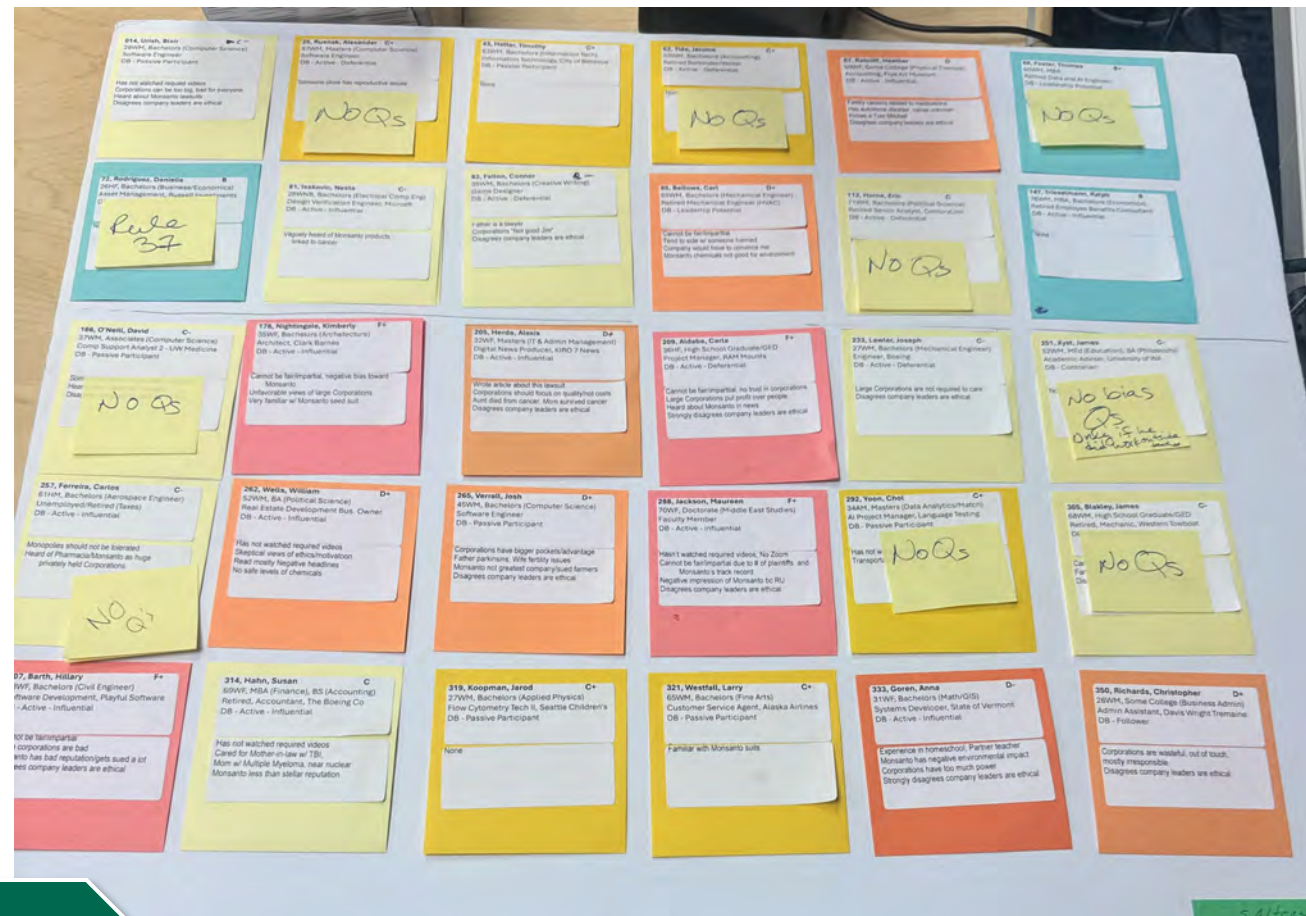
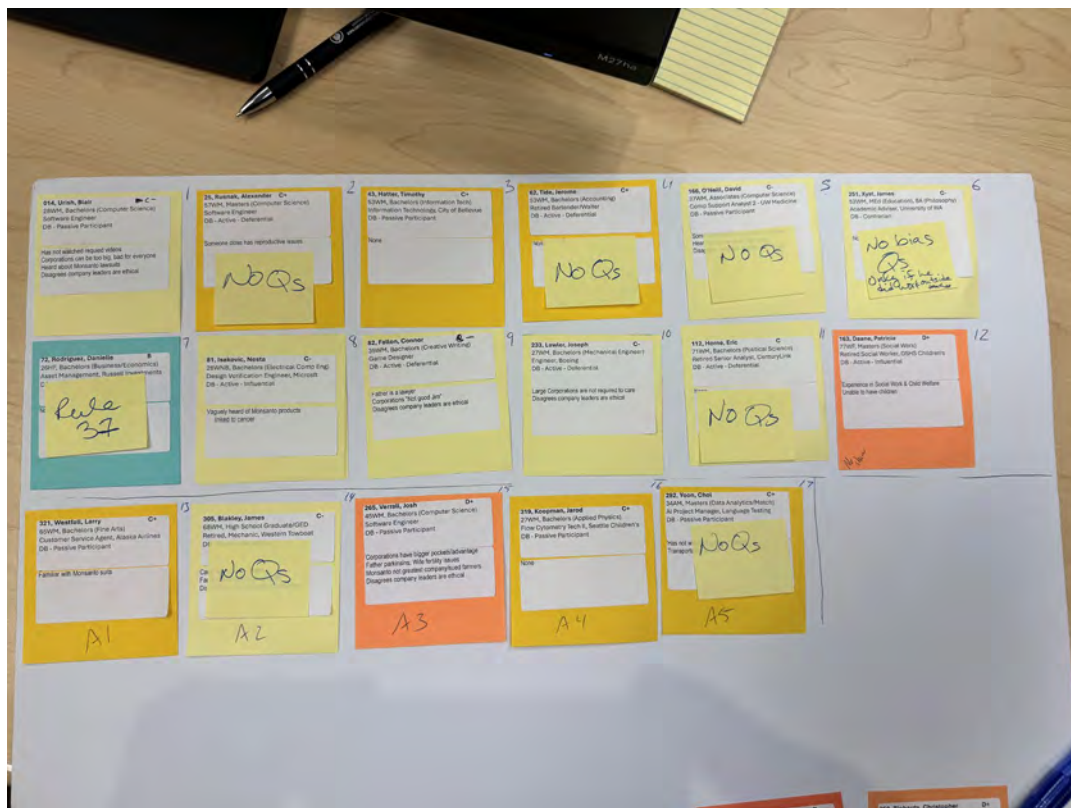


You Can Learn A Lot From What People Post Online



“I’m asking you to retain a lawyer and return to this courtroom on Tuesday March 10, 2020, with an attorney to show cause why I should not find you in contempt. You face a fine and up to 30 days in jail,” the judge told Mittelmark in January.

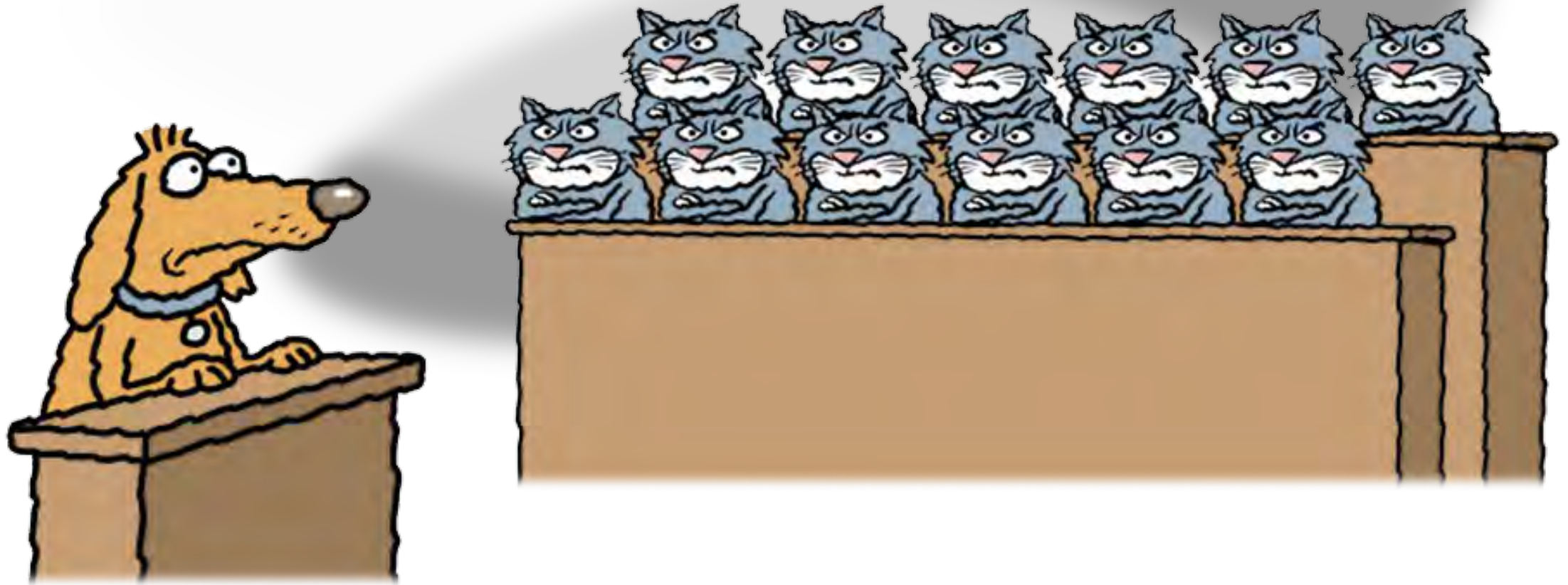
Voir Dire: Key Principles



8 | Be Organized



Cause Challenges: Because You Can't Strike Them All...





Reveal Bias: Put Jurors at Ease

People hate public speaking

Make it normal

- Doesn't mean you're not a fair person
- "The Parental Referee"

Make it non-judgmental

- We have thick skin
- Keep the client or corporate representative out of the courtroom

Practice Tip
-During individual
follow-up

"Think it might be difficult
to be a fair referee in this
case?"

"Inclined to call balls and
strikes in favor of the
plaintiff?"

Reveal Bias: Words Matter

Normalize the response:



“How many of you believe . . .”

“Some people believe. . .”

Practice Tip:
Pair with
“other people”
to precondition



Reveal Bias: Words Matter

Ask open-ended questions or get the juror to rephrase in their own words:



“How were you affected by that?”



Reveal Bias: Words Matter

Assume the response:



“Given...
...how difficult would it be for
you to set that aside...
...in this case?”

Reveal Bias: Words Matter

Phrases to avoid:



“cannot”

“unable to”

“have a
problem/issue with”

Practice Tip:
Use “difficulty
with” or
“struggle with”
instead

Reveal Bias: Body Language Matters

Follow the leader

Normalize the response

Empathize with the juror

- Raise hands
- Nod along



Practice Tip

Show empathy
by mirroring the
juror's facial
expressions



Cause Sequencing: Getting The Horse to Drink





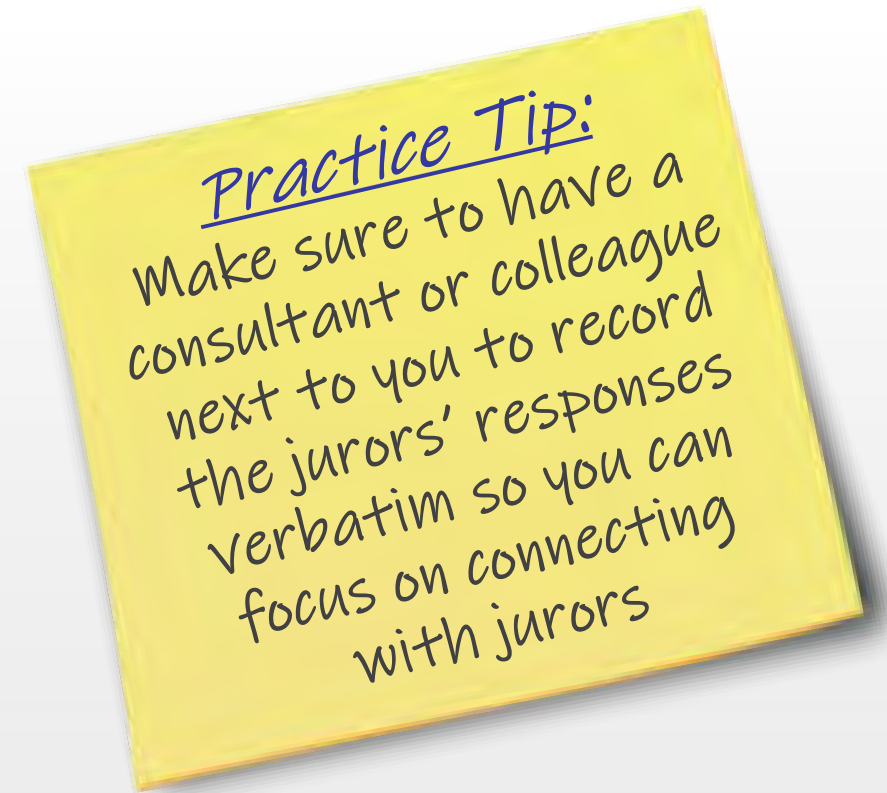
Step 1 Disarm the Juror

- Start with the easy questions
 - What do you like most about your job?
 - What makes you good at your job?
 - What do you like most about being a parent?



Step 2 Remind the Juror

- Repeat back their responses
- Use the juror's exact language
- Establish and strengthen the record
- Force the juror to commit





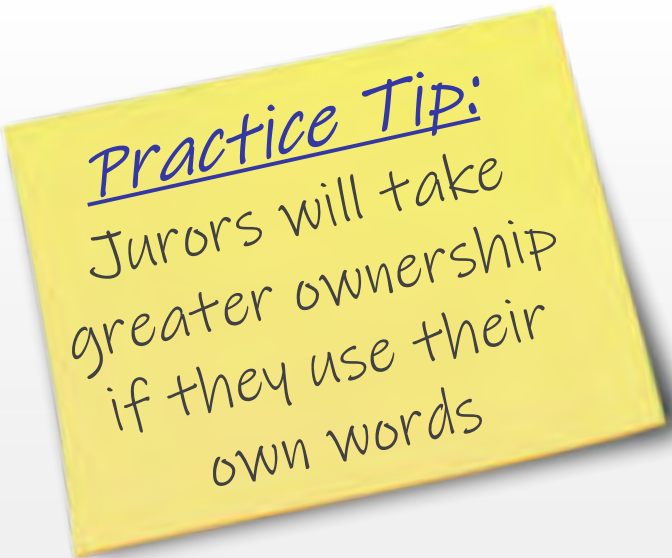
Step 3 Ask for Elaboration

- Strengthen the commitment:
 - “Tell me more about that.”
 - “What led you to develop that opinion?”
 - “How long have you held that belief?”
 - “How were you affected by that experience?”

Practice Tip:
In a successful voir dire, the jurors should be talking more than the attorney; ask open-ended questions

Step 4 Acknowledge It Would Be Difficult to Change

- Create cognitive dissonance:
 - Tendency to seek consistency between actions and beliefs
 - “How likely is it that you’re going to stick to your guns on this?”
 - “How difficult would it be for me to change your mind about that?”



Practice Tip:
Jurors will take
greater ownership
if they use their
own words

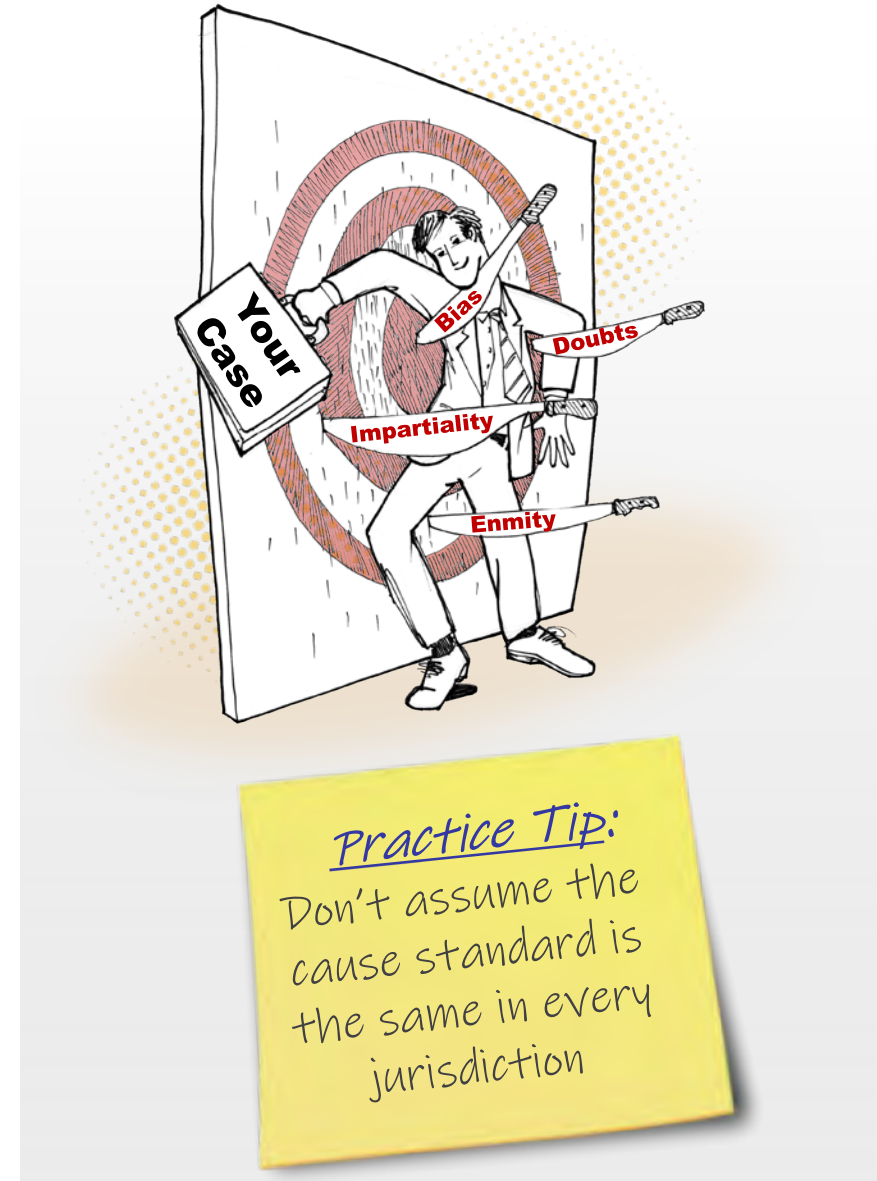
Step 5 Throw Softballs

- Ease them in with softer language
- Bring it home to *this case*
- “Could that experience color how you view the evidence in *this case*?”
- “How difficult would it be for you to just set all of that aside and render a verdict solely on the evidence in *this case*?”
- Remind them what they’ve said again: “Given that you said....”



Step 6 Go In for the Kill

- Use the “magic words”
- Know the statutory language and case law
- Make sure to word the question so that the desired response is “Yes”
- “Would that terrible experience make it too difficult for you to be completely fair and impartial in this case?”
- “Will that experience influence your judgment in the case?”
- “Do you have some doubts about your ability to be impartial?”
- “Fair to say you have a bias against my client that would put us at a disadvantage?”



Practice Tip:
Don't assume the
cause standard is
the same in every
jurisdiction



Pathways to a Cause Challenge

1. Can't be fair or impartial
2. Can't follow the judge's instructions
3. Have a bias that can't be set aside
4. Would require the defendant to prove it isn't at fault even though plaintiff has the burden of proof
5. Would find one side's witnesses more credible regardless of the testimony
6. Defendant is starting from behind or will be at a disadvantage (*works for some judges*)

But What if They'll “Try?”





Recap

1 **Disarm** the Juror

2 **Remind** the Juror

3 Ask for **Elaboration**

4 Acknowledge it Would Be **Difficult to Change**

5 Throw **Softballs**

6 Go in for **the Kill**

Questions/Discussion

