



THE JURY SELECTION PROCESS

WATTS | GUERRA <sup>L
L
P</sup>

THE PROCESS OF MAXIMIZING THE GOLDEN RULE

FRANCISCO GUERRA IV
WATTS GUERRA LLP

AGENDA

INTRODUCTION

Speaker Introduction and Overview

JURY COMPOSITION

Exploring the generational composition of juries

HOW COVID HAS CHANGED THE JURY

The impact of COVID-19 and the population

JUROR SCORECARDS

Utilizing the questionnaires to create qualitative data

BEST PRACTICES

How to succeed in the courtroom



FRANCISCO GUERRA IV

Capital Partner, Watts Guerra LLP



- Grew Up in Starr County
- Texas A&M Undergraduate Degree
 - Commander of Squadron 15
 - First Hispanic Commander of the elite
Ross Volunteer Company
- University of Texas School of Law
- Upon Graduation Joined Allen, Stein, Powers,
Durbin & Hunnicutt
- Joined Harris & Watts in 2001
- Capital Partner to Watts Guerra in 2009

JURY COMPOSITION

[JUROR
PARTICIPATION &
RESEARCH]

How the increased generational, gender, racial and ethnic diversity of today's juries impact every phase of your trial preparation.

JURY COMPOSITION

How the increased generational, gender, racial and ethnic diversity of today's juries impact every phase of your trial preparation.

1

JURORS JUDGE EVIDENCE AND DETERMINE IF IT MATCHES WHAT THEY KNOW TO BE TRUE.

2

JURORS EVALUATE AND COMPARE THEIR OWN CASE-RELEVANT FEELINGS, ACTIONS, AND OPTIONS WITH THOSE OF THE LITIGANTS.

3

DEPENDING ON THEIR LIFE EXPERIENCES, JURORS MAY ENTIRELY AGREE WITH OR COMPLETELY DISAGREE WITH THE POSITION OF EITHER PARTY.

GENERATIONAL COMPOSITION



WHO IS IN THE JURY POOL?

GENERATIONAL LABEL	AGE STATISTICS	CURRENT PERSPECTIVE
BABY BOOMERS	BORN: 1946-1964 NOW: 57-75	The biggest consumers of traditional media but 90% have a Facebook account. Shaped by Post WWII optimism, the cold war, and the hippie movement.
GEN X	BORN: 1965-1980 NOW: 41-56	Still reads newspapers, magazines, listens to the radio, and watches TV. They are digitally savvy and spend about 7 hours a week on Facebook. Shaped by the end of the cold war and the rise of personal computers.
MILLENNIALS	BORN: 1981-1996 NOW: 21-40	95% still watch TV, but use streaming services versus cable. Extremely comfortable with mobile devices and have multiple social media accounts. Shaped by The Great Recession, 9/11, and the technological explosion of internet and social media.
GEN Z	BORN: 1997-2012 NOW: 6-24	Received first mobile phone around the age of 10. They have grown up in a hyper-connected world and a smartphone is how they communicate. They spend about 3 hours a day on their phone. Shaped by smartphones, social media, and never knowing a country not a war.

WHO IS IN THE JURY POOL?

BABY BOOMERS

Values relationships since they did not grow up with technology running their lives

Play by the rules, put work first, paved the way for the workaholic

GEN X

Raised by two parents who worked or a single, divorced parent

Delayed marriage and childbearing to focus on themselves

First-generation to value work-life balance due to parent's workaholicism and broken homes

WHO IS IN THE JURY POOL?

MILLENIALS

Known as confident, entitled, and depressed

Raised by parents who saw them as partners versus authoritative

Marriage to technology has destroyed interpersonal skills resulting in depression

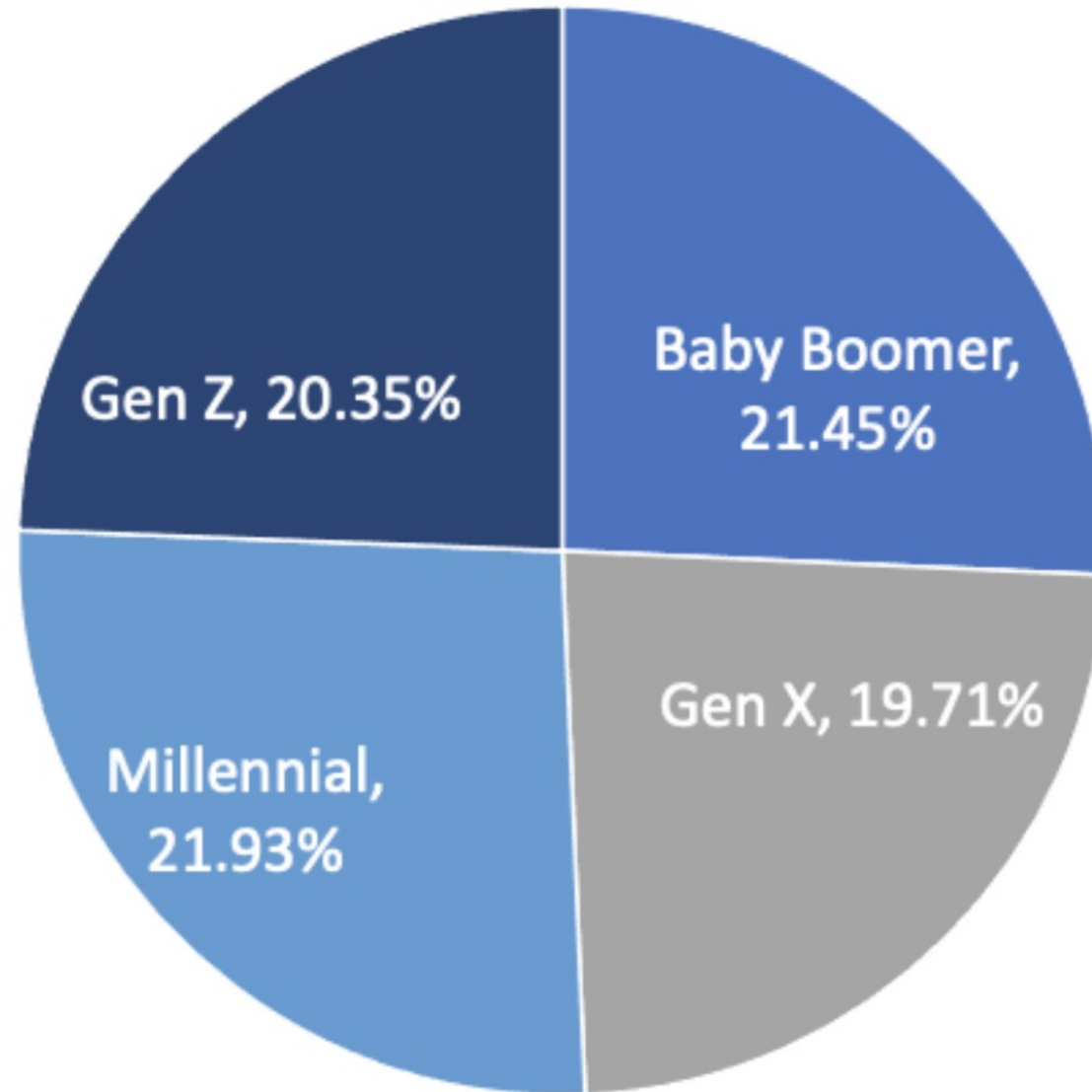
Strive for flexibility rather than a higher tax bracket (more vacation time, casual dress, and flexibility of working from home versus in an office)

Work smarter, not harder

GEN Z

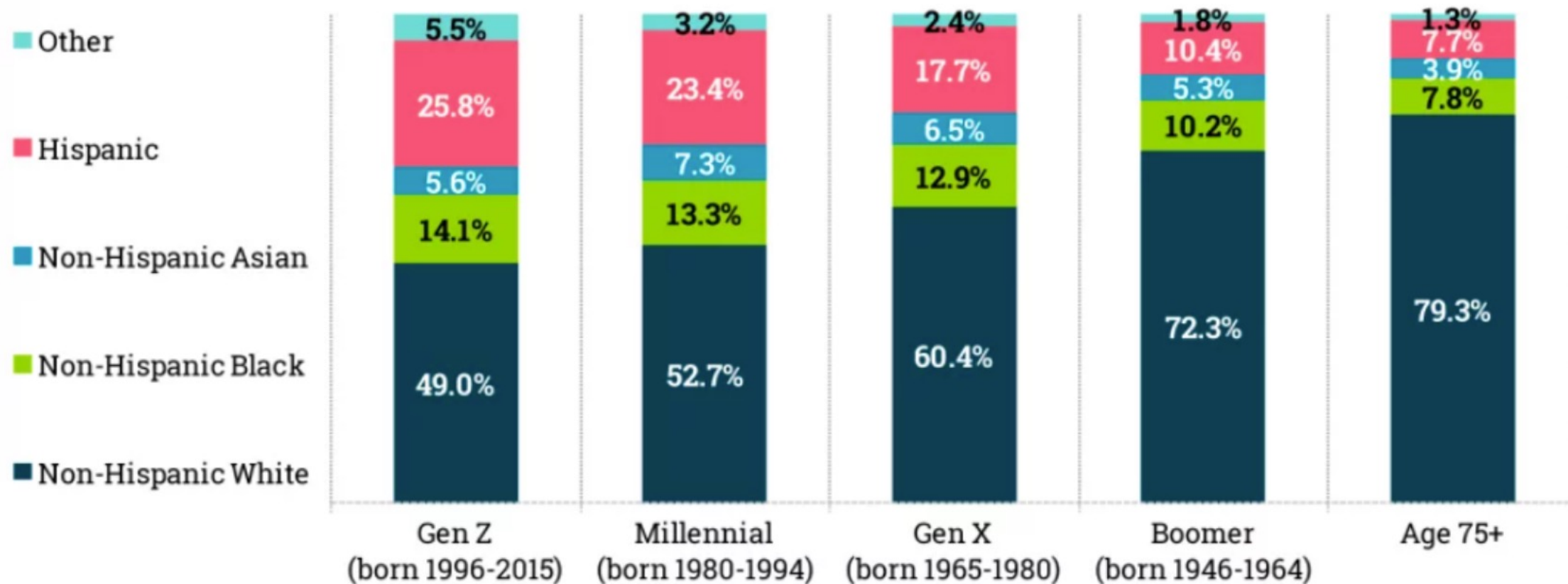
Still determining characteristics as they age

WHO IS IN THE JURY POOL?



WHO IS IN THE JURY POOL?

US Population Distribution, by Generation and Race/Ethnicity



WHO IS IN THE JURY POOL?

LIKELIHOOD OF
REPORTING

80%+



YOUNGER WHITE MEN
CONSERVATIVE WHITE MEN
NON-COLLEGE EDUCATED WHITE MEN

LIKELIHOOD OF
REPORTING

65-
75%



YOUNGER HISPANIC MEN
YOUNGER WHITE WOMEN
COLLEGE-EDUCATED WHITE MEN
OLDER WHITE MEN
AFRICAN AMERICAN MEN

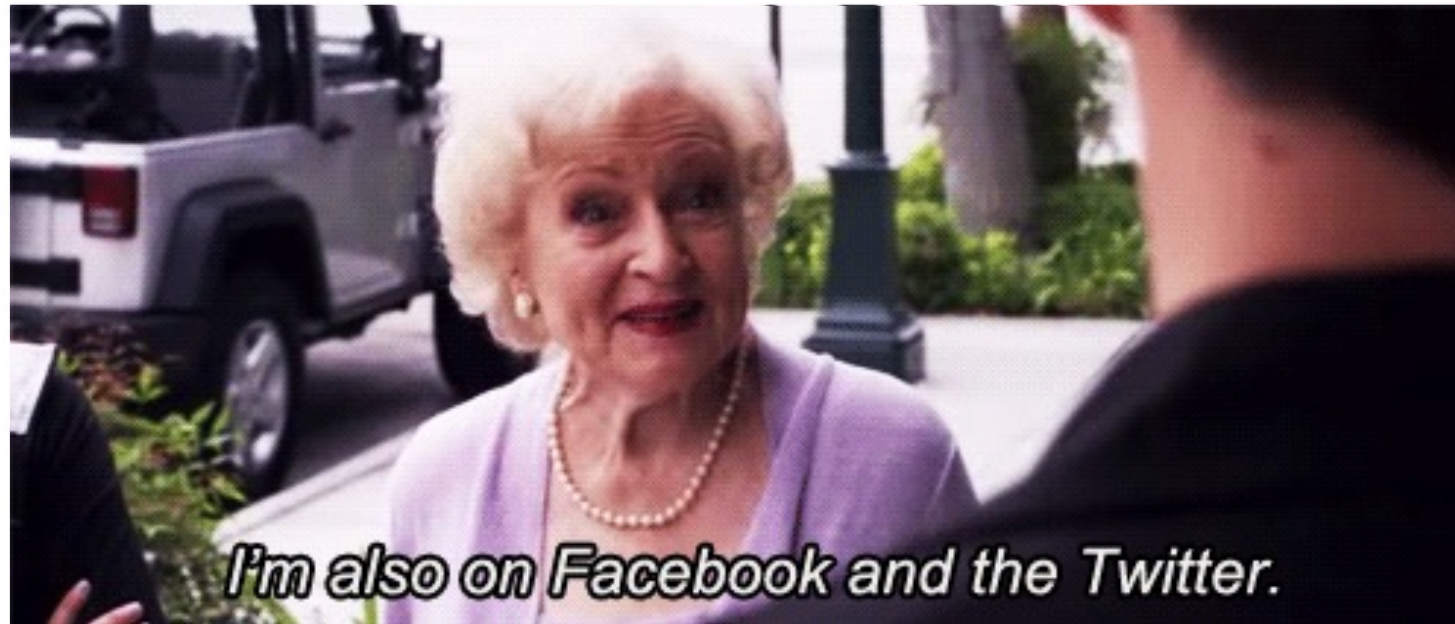
LIKELIHOOD OF
REPORTING

45-
60%



YOUNGER HISPANIC WOMEN
YOUNGER AFRICAN AMERICAN WOMEN
OLDER WHITE WOMEN
OLDER HISPANIC WOMEN
OLDER AFRICAN AMERICAN WOMEN

SOCIAL MEDIA'S IMPACT ON THE JURY



SOCIAL MEDIA'S IMPACT ON THE JURY

INSTAGRAM

OVER **1 BILLION**
MONTHLY ACTIVE
USERS

THE WORLD'S
SEVENTH MOST
VISITED WEBSITE

90% OF INSTAGRAM
USERS FOLLOW AT
LEAST ONE
BUSINESS ACCOUNT

THE AVERAGE DURATION
OF EACH SESSION
ON INSTAGRAM IS
3 MINUTES

VIDEOS ON INSTAGRAM
SEE A **49%** HIGHER
ENGAGEMENT THAN
IMAGES

INSTAGRAM
ADS REACH
928.5 MILLION
PEOPLE

TWITTER

SIXTH MOST
VISITED WEBSITE
IN THE WORLD

THE AVERAGE USER
SPENDS **10 MINS**
EVERY SESSION

TWEETS WITH VIDEO
GET **10%** MORE
ENGAGEMENT

TWEETS WITH
HASHTAGS GET **100%**
MORE ENGAGEMENT

PEOPLE ARE **26%**
MORE LIKELY TO VIEW
ADS ON TWITTER THAN
ANY OTHER LEADING
PLATFORM

FACEBOOK

WORLD'S **THIRD**
MOST VISITED
WEBSITE

2.5 BILLION
MONTHLY ACTIVE
USERS

1.95 BILLION AD REACH
EQUATES TO **32%** OF THE
WORLD POPULATION
OVER THE AGE OF 13

69% U.S ADULTS
USE FACEBOOK

AVERAGE TIME SPENT
ON FACEBOOK IS
11 MINS

VIDEO POST EARN THE
HIGHEST ENGAGEMENT
ON FACEBOOK

SOCIAL MEDIA'S IMPACT ON THE JURY

GEORGE FLOYD



SOCIAL MEDIA'S IMPACT ON THE JURY

WE HAVE BECOME A SOCIETY OF
DESENSITIZED AND
SELF-CENTERED
PEOPLE



QUESTIONS?



HOW COVID HAS CHANGED THE JURY

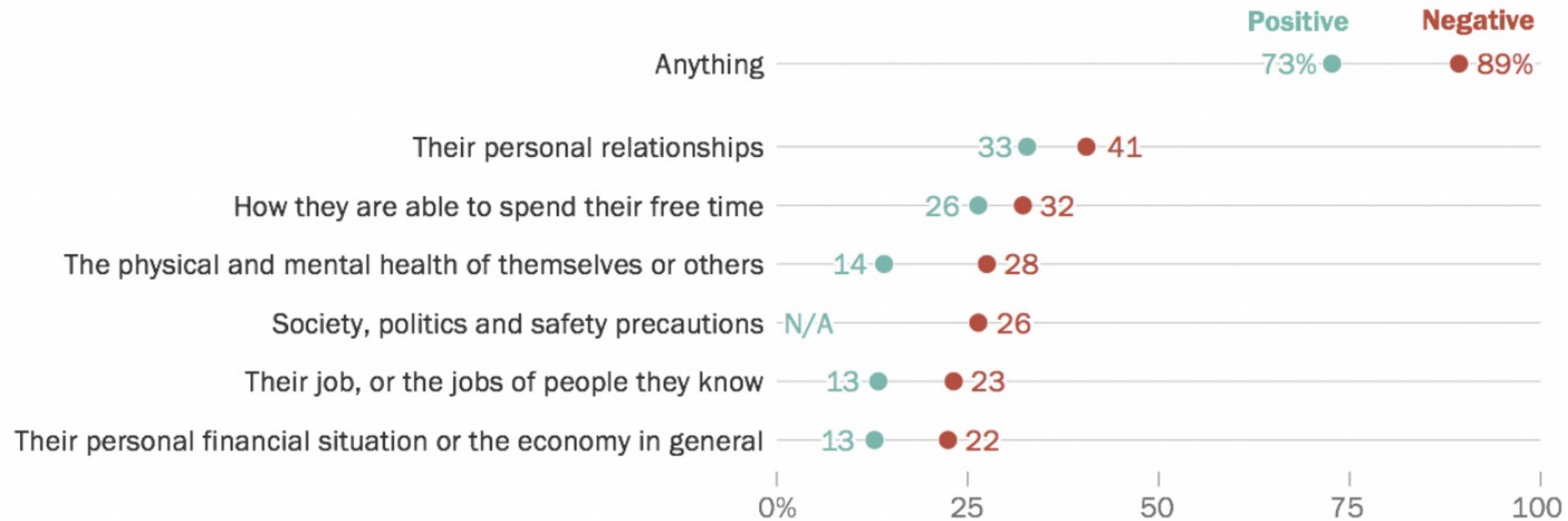
[HARDENED]

The pandemic has forever changed the the population. When we now enter the courtroom we will be presented with even more challenges and bias to overcome.

COVID-19 AND THE IMPACT ON THE POPULATION

In open-ended responses about how the COVID-19 pandemic has affected their lives, Americans describe wide-ranging difficulties and unexpected silver linings

% of U.S. adults who say the COVID-19 pandemic has had a positive/negative impact on ...



Note: Verbatim responses have been coded into categories.

Source: Survey of U.S. adults conducted Aug. 31-Sept. 7, 2020.

PEW RESEARCH CENTER

COVID-19 AND THE IMPACT ON THE POPULATION

Over 50% of those polled are not comfortable reporting for jury duty.

Activities in a 'Post' Pandemic World						
% Not Comfortable						
Please indicate how comfortable you would personally feel right now doing each of the following on a scale of 0 to 10, where 10 means extremely comfortable and 0 means extremely uncomfortable...						
	Total	Risk Obstacles	No Risk Obstacles	White	Latinx	AfAm
Visiting with a close friend or family member at their home	23%	30%	14%	20%	17%	40%
Going out to the grocery store	27%	34%	20%	27%	22%	34%
Going to a polling place to vote	36%	43%	28%	34%	34%	42%
Going to a government office or public building	44%	49%	37%	42%	33%	57%
Eating out in a restaurant	50%	57%	42%	47%	44%	67%
Reporting to your local courthouse for jury duty if you received a summons requiring you to appear	52%	57%	47%	50%	47%	65%
Reporting to your local courthouse for jury duty	52%	59%	48%	49%	50%	73%
Serving on a jury if selected	54%	59%	48%	51%	49%	66%

COVID'S IMPACT ON THE JURY

COVID HAS FURTHER CREATED A SOCIETY OF

DESENSITIZED

AND

SELF-CENTERED

PEOPLE



QUESTIONS?



ACTUAL JURY SELECTION PROCESS



CREATE AN "IDEAL JUROR" BASED ON THE CLIENT



JUROR SCORECARDS

[ANALYZE]

Utilizing juror questionnaires to build scorecards to quantify juror information for initial review in jury selection.

JUROR SCORECARDS

To help gather initial data regarding the jurors. This helps guide questioning and show jurors who might be "red flags" for the case.

THE PROCESS

CREATE AN "IDEAL JUROR"
BASED ON THE CLIENT

RECEIVE JUROR INFORMATION

UTILIZE LAW CLERKS TO
QUANTIFY JURORS VIA THE
SCORECARD

ANALYZE JURORS SCORES AS
COMPARED TO THE
"IDEAL JUROR"

CREATE AN "IDEAL JUROR" BASED ON THE CLIENT

Choosing a jury that can identify with your client is a key component in ensuring that you have a successful trial. Qualities you should consider for your ideal juror can be found in the jury questionnaire that the potential jurors have to fill out.

Examples of those are:

- Age
- Gender
- Occupation
- Race
- Education Level
- Marital Status
- Children
- Spouse Occupation
- Prior Accident with Injury
- Prior Civil Service
- Party to a Lawsuit
- Social Media

RECEIVE JUROR INFORMATION CARDS



UTILIZE JEDI (associates) AND GRASSHOPPERS (law clerks) TO ASSIGN NUMERICAL VALUES VIA THE SCORECARD



UTILIZE JEDI (associates) AND GRASSHOPPERS (law clerks) TO ASSIGN NUMERICAL VALUES VIA THE SCORECARD

The associates and law clerks at our firm play an intricate role in our jury selection process. They take the juror questionnaires and input them into our spreadsheet to help quantify the jurors.

- The purpose of quantifying jurors is to help spotlight key characteristics that would help or hinder our client based on information they electively tell us
- Bringing attention key information can help the attorney when they are conducting their voir dire
- A key factor the law clerks and associates help with is social media investigation of potential jurors

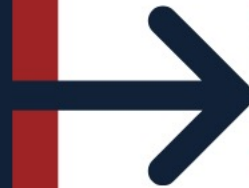


UTILIZE JEDI (associates) AND GRASSHOPPERS (law clerks) TO
ASSIGN NUMERICAL VALUES VIA THE SCORECARD

SOCIAL MEDIA INVESTIGATION

We are in a new information age where people share their lives and opinions on social media platforms like Instagram, Facebook, Twitter, and LinkedIn.

But what if they are not in
the courtroom to see what
the juror looks like?
How will they determine
who the juror is?



By taking a deep
dive into the
information that is
found in the juror
scorecards

UTILIZE JEDI (associates) AND GRASSHOPPERS (law clerks) TO
ASSIGN NUMERICAL VALUES VIA THE SCORECARD

SOCIAL MEDIA INVESTIGATION

Utilizing the juror information card, law clerks can find the juror on social media to see who the person is behind the paper.

- The questionnaire contains their name, job, education, age, marital status, and number of children. This information helps narrow down search results so you can easily find your jurors.



ANALYZE JURORS SCORES AS COMPARED TO THE "IDEAL JUROR"

(The ideal juror is most like your EXHIBIT A)



SOCIAL MEDIA INVESTIGATION

BEST PRACTICES

KEY INDICATORS TO BE AWARE OF

- Posts or interests that directly conflict with your ideal juror
- Lifestyle or values portrayed
- How outspoken they are

WHAT IF YOU CANNOT FIND A JUROR ON SOCIAL MEDIA?

- Check all platforms (including LinkedIn)
- Look for spouses or children that might be associated with the person

EXAMPLE CRITERIA FOR A SCORECARD

The values associated with the variables can vary based on your "ideal juror"

Depending on preference you can determine whether a low or high value can correlate to your "ideal juror"

Variable	Values
Age	1 - 18 to 30
	2 - 31 to 44
	3 - 45 and Older
Occupation	1 - Social Activist, Welfare Worker, Professor, Part-Time Worker, Unemployed, Minister, Sociologist, Education
	2 - Other
	3 - Agriculture, Business, Military, Engineer, Self-Employed
Race	1 - Indian-American
	2 - Other
	3 - White
Education	1 - High School
	2 - Other
	3 - College
Marital Status	1 - Single With Children (Single)
	2 - Married with Children (Married)
	3 - No Children (Other)
Age of Children	1 - No Children or Younger than 18 (Younger)
	2 - Children both younger and older than 18 (Both)
	3 - Older than 18 (Older)
Spouse Occupation	1 - Social Activist, Welfare Worker, Professor, Part-Time Worker, Unemployed, Minister, Sociologist, Education
	2 - Other
	3 - Agriculture, Business, Military, Engineer, Self-Employed
Prior Accident	1 - Accident with Back Injury (With)
	2 - Accident without Back Injury (Without)
	3 - No Accident (None)
Prior Accident FM	1 - Accident with Back Injury (With)
	2 - Accident without Back Injury (Without)
	3 - No Accident (None)
Prior Civil Service	1 - Yes
	2 - No
Party to Lawsuit	1 - Plaintiff
	2 - None
	3 - Defendant

INPUTTING INFORMATION INTO THE SCORECARD

Juror Number:	
Name:	
Age	
Gender	
Occupation	
Race	
Years of Education	
Marital status	
# of children	
Age of Children	
Spouse occupation	
Prior accident involving back injury	
Prior accident involving back injury involving family member	
Prior civil service	
Party to lawsuit	
SOCIAL MEDIA	
Ranking (please identify each person with how they closely relate to the below statements. Please provide a written explanation as to what caused you to make that judgement below:	
3 - Conservatives, Racists, Strong negative opinion on BLM or any other minority group organization	
2- Neutral to all factors	
1 - Pro minorities, Equality, Could align with Liberal Ideals, Etc.	

Based on the criteria in the previous slide, clerks will input information here and a score will be tabulated for each juror.

ANALYZE JURORS SCORES AS COMPARED TO THE "IDEAL JUROR"

	Juror 1	Juror 2	juror 3	juror 4	juror 5	juror 6	juror 7	juror 8	juror 9
Name:	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0
Occupation	0	0	0	0	0	0	0	0	0
Race	0	0	0	0	0	0	0	0	0
Years of Education	0	0	0	0	0	0	0	0	0
Marital status	0	0	0	0	0	0	0	0	0
# of children	0	0	0	0	0	0	0	0	0
Age of Children	0	0	0	0	0	0	0	0	0
Spouse occupation	0	0	0	0	0	0	0	0	0
Prior accident involving back injury	0	0	0	0	0	0	0	0	0
Prior accident involving back injury involving family memb	0	0	0	0	0	0	0	0	0
Prior civil service	0	0	0	0	0	0	0	0	0
Party to lawsuit	0	0	0	0	0	0	0	0	0
Social Media Score	0	0	0	0	0	0	0	0	0
Total Score	1	1	1	1	1	1	1	1	1

The individual juror information is then uploaded into an overall comparison so jurors can be viewed side by side in comparison.

Jurors with the lowest score are better than those with higher scores.

PROS AND CONS OF JUROR QUESTIONNAIRES

Q1. (a)

17. Have you or has anyone you know well ever had any connection with a regularly exercising with oil or gas leases? ☐ Yes, I have ☐ Yes, someone I know well has ☐ No

If "yes" please describe the nature of the connection: family friend (CFO)

If "yes" would you describe the connection with regular exercising as it will go or other related issues as: _____

☐ Very positive ☒ Somewhat positive ☐ Neutral response ☐ Very negative

Please explain your answer: After several inquiries

18. How familiar are you with the procedures for entering into oil or gas royalty agreements? ☐ Very familiar ☒ Somewhat familiar ☐ Don't know

19. Have you ever entered into a royalty agreement? ☒ Yes ☐ No

If yes, please describe: _____

20. What is your general opinion of the following types of companies?

	Very Independent	Independent	Somewhat Independent	Somewhat Dependent	Very Dependent
Individual companies	☐	☐	☐	☐	☐
Financial companies	☐	☐	☐	☐	☐
Oil Companies	☐	☐	☐	☐	☐
Insurance companies	☐	☐	☐	☐	☐
Banks	☐	☒	☒	☒	☐

QUESTIONS?



BEST PRACTICES

[CREDIBILITY]



Set yourself up for success in the courtroom by understanding your juror pool and being able to interact with them to help you represent your client.

BEST PRACTICES

Set yourself up for success in the courtroom by understanding your juror pool and being able to interact with them to help your represent your client.

MANAGE YOUR
PRESENTATION

SET THE STAGE

RELATE TO YOUR JURY'S
LIFE EXPERIENCE

SHOW, DON'T TELL

EARLY TRIAL PREP

MANAGE YOUR PRESENTATION

- Show the jurors early that you have the facts and data
- Focus early on the outcome of your case
 - What is the meaning of your case?
 - What do you need them to do?
 - What happens when the jury decides?
- Respect the time of the jury at all stages of trial



SET THE STAGE



Provide succinct issues of the case

- Passive learners
- Shorter attention span
- Avoid long case presentations
- Do not spin your argument, add substance

RELATE TO YOUR JURY'S LIFE EXPERIENCE

- Jurors resist emotional appeals
- Do not editorialize about your client
 - Tell descriptive stories in the active voice from the client's perspective
- Do not focus your presentation on whom you think the foreperson or jury leader will be (disputed by Jerry Spence Trial College)



SHOW, DON'T TELL

You must be an “actor” in the courtroom and provide constant stimulation for your audience

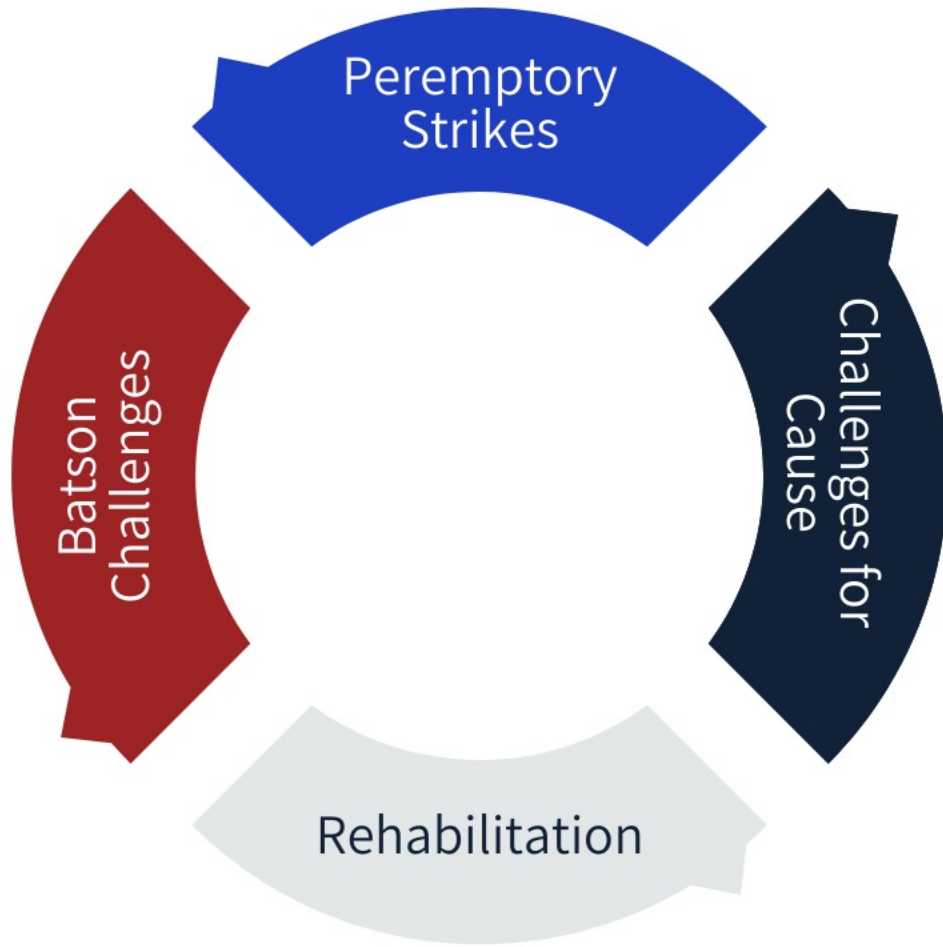
- Change is necessary throughout your various presentations
- Combine the use of various types of demonstrative aids
 - Foam boards still effective
 - Almost always will need to display critical documents electronically
 - Be careful of over-using PowerPoint

EARLY TRIAL PREP

- Think about your “visual” strategy at inception of the case
- Develop a juror generational reminder sheet for your trial notebook and use it
- Resist defaulting to demographic stereotypes (especially in venues with limited voir dire opportunities)



COURTROOM LEGAL PROCESSES



FINAL GENERAL GUIDELINES

As a result of the Court's recent decisions, we encourage practitioners to follow a few general guidelines:

Do NOT give an EXTENSIVE SUMMARY of the facts of the case during your opening remarks.

Make sure AT LEAST ONE POTENTIAL RESPONSE to each question asked could serve as the basis for CAUSAL CHALLENGE

Focus on JUROR ATTITUDES and experiences in questioning as opposed to the facts of your case.

If the court restricts your inquiry on a particular subject, offer the court ALTERNATIVE INQUIRIES to obtain info.

If a juror expresses bias, FIRMLY TIE THEM TO THEIR RESPONSE before allowing opposing counsel an opportunity to retaliate

If a juror expresses BIAS, establish that such bias existed BEFORE THEY CAME TO COURT and were exposed to any facts from the case.



GIFWAVE.COM