

JURY SELECTION

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TRIAL SCHOOL – 2025

JURY SELECTION

- “**OLD SCHOOL**” v. “**TRIAL SCHOOL**”
- How to find jurors who will react appropriately to our client’s story of innocence

OLD SCHOOL

- Lecture method – Lawyer does most of the talking
- Establish lawyer's authority/credibility
- Indoctrinate jurors about the law (burden of proof, reasonable doubt, etc.)
- Elicit PROMISES from jurors to follow the law

OLD SCHOOL

PROBLEMS

- Tells us almost **NOTHING** about the jurors
- We end up falling back on **STEREOTYPES** and gut feelings
- Banking on jurors **ASPIRATIONAL** promises

OLD SCHOOL

STEREOTYPES

LOVE

Women

Blacks

Young

Poor

Teachers/Social Workers

HATE

Men

Caucasians

Old

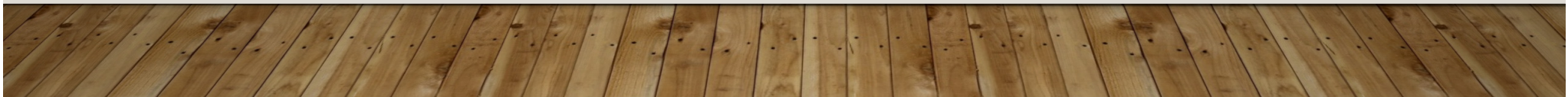
Wealthy

Bankers/Cops

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“It is **arrogant** and **stupid** to choose jurors based on stereotypes of gender, race, age, ethnicity or class.”

- Ira Mickenberg



OLD SCHOOL

ASPIRATIONAL PROMISES

Studies show:

- Jurors decide cases based on prejudices, preconceived notions, and feelings, regardless of the LAW or what any judge /lawyer tells them, even if they honestly believe otherwise.
- Asking about future behavior results in aspirational answers.

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- LISTENING – Jurors do most of the talking
- Establish jurors' authority – empower them to act to do right
- Indoctrinate jurors about story of innocence
- Elicit opinions/feelings that help us predict how jurors will emotionally react

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Studies show:

- The best predictor of what a person will do in the future is not what they say they will do, but what they have done in the past in analogous situations.
- Attitudes and feelings (emotions) are based on personal experiences

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COMMAND

SUPERLATIVE

ANALOGY

TRIAL SCHOOL

COMMAND

- TELL us about...
- DESCRIBE for us...
- SHARE with us...

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SUPERLATIVE

- The BEST...
- The WORST...
- The MOST SERIOUS...
- The MOST RECENT...

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ANALOGY

- Life Experience
- Personal
- Dealing with a topic central to client's story of innocence

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EXAMPLES OF CSA “QUESTIONS”

(Self Defense) -- **TELL** us about the **MOST** force you ever had to use to defend yourself

(Alcohol) -- **SHARE** with us about the person who showed the **BIGGEST** change in behavior after drinking alcohol

(Police) -- **DESCRIBE** for us the **WORST** encounter you or someone close to you have had with police

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What if my judge won't let me do this?!

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If judge tries to stop this:

- Prophylactic setup
- Remind judge the Government did this
- Cite case law
- In order to provide effective assistance of counsel need to judge potential jurors' fairness
- Offer to be done sooner

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If judge tries to stop it and all else fails...

Go in through the back door!

- Can you be fair?
- What makes you say that?
- Based upon how you feel about _____?
- How did you come to your opinion or feelings about _____?
- What had the biggest influence on your opinion or feelings about _____?

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MAL DAVIS CASE

- What are our emotional pitches?
- What facts/characters might jurors have emotional reactions to after hearing our story?
- What analogous life experiences might we want to have them share with us?