

Combatting Racism in Jury Selection





STATE OF WASHINGTON V. JOSEPH MARIO ZAMORA

2/22/22

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WASHINGTON STATE SUPREME COURT



Preparing for Voir Dire



Essential Voir Dire Steps

1

Openly discuss implicit racial bias with jurors

2

Identify jurors on the panel who are biased

3

Eliminate biased jurors establishing challenges for cause

4

Remove remaining biased jurors with peremptory challenges

5

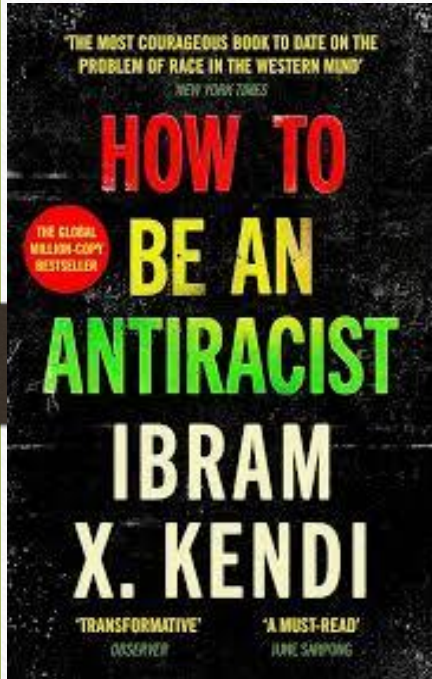
Protect and defend unbiased jurors of color using GR 37

Required Due Diligence

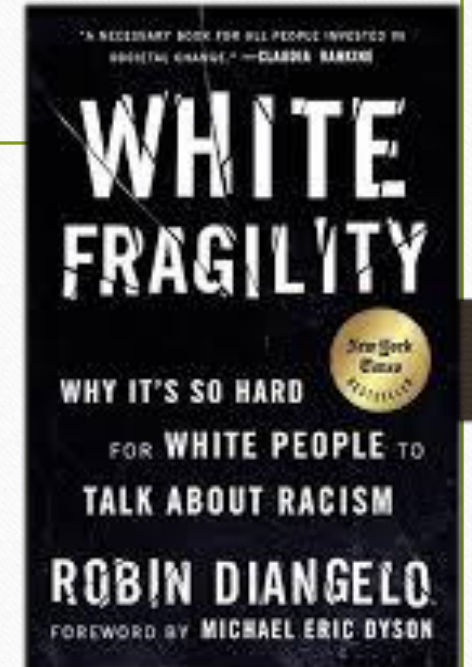


- PREPARE IN ADVANCE TO DESELECT JURORS
- PREPARE CHALLENGE JURORS FOR CAUSE
- PREPARE TO USE PEREMPTORIES TO ELIMINATE BIASED JURORS WHEN COURT FAILS

Study, Study, Study



- *State v. Zamora*, 199 Wash.2d 698 (2022)
- *In re Pers. Restraint of Skone*, 30 Wn. App. 2d 1 (2024)
- Federal Court Unconscious Bias: [Unconscious Bias Juror Video | Western District of Washington | United States District Court](#)
- King County Court Unconscious Bias: https://www.youtube.com/watch?v=_su-KAVd274



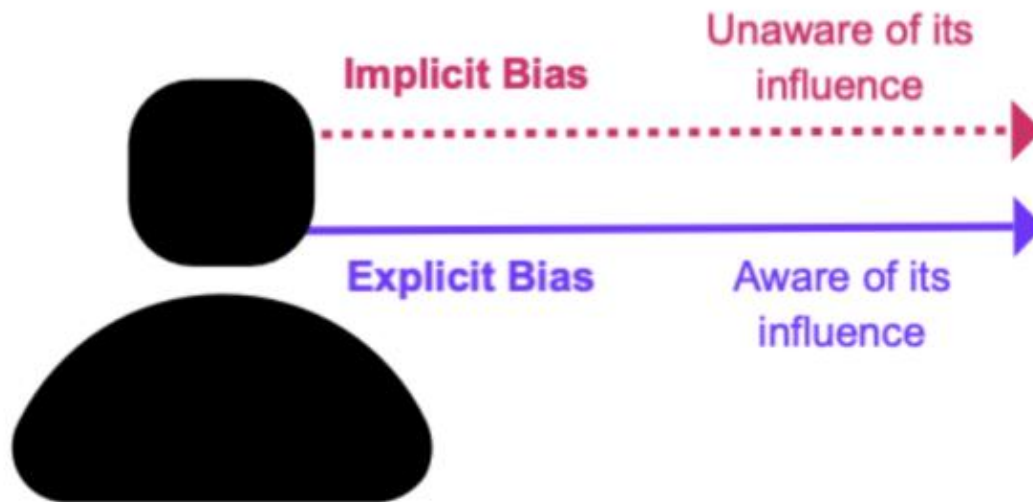
Interview Your Client

- Ask about your client's background
- Ask how they identify
- Ask about the role racism played in their case as they see it
 - Complainant and witnesses
 - Cops
- Explain your strategy to identify and combat racism and ask for input



Develop Case Theme/Closing Argument

Implicit Bias vs. Explicit Bias



Targets of
Biased Treatment



Jury Questionnaires

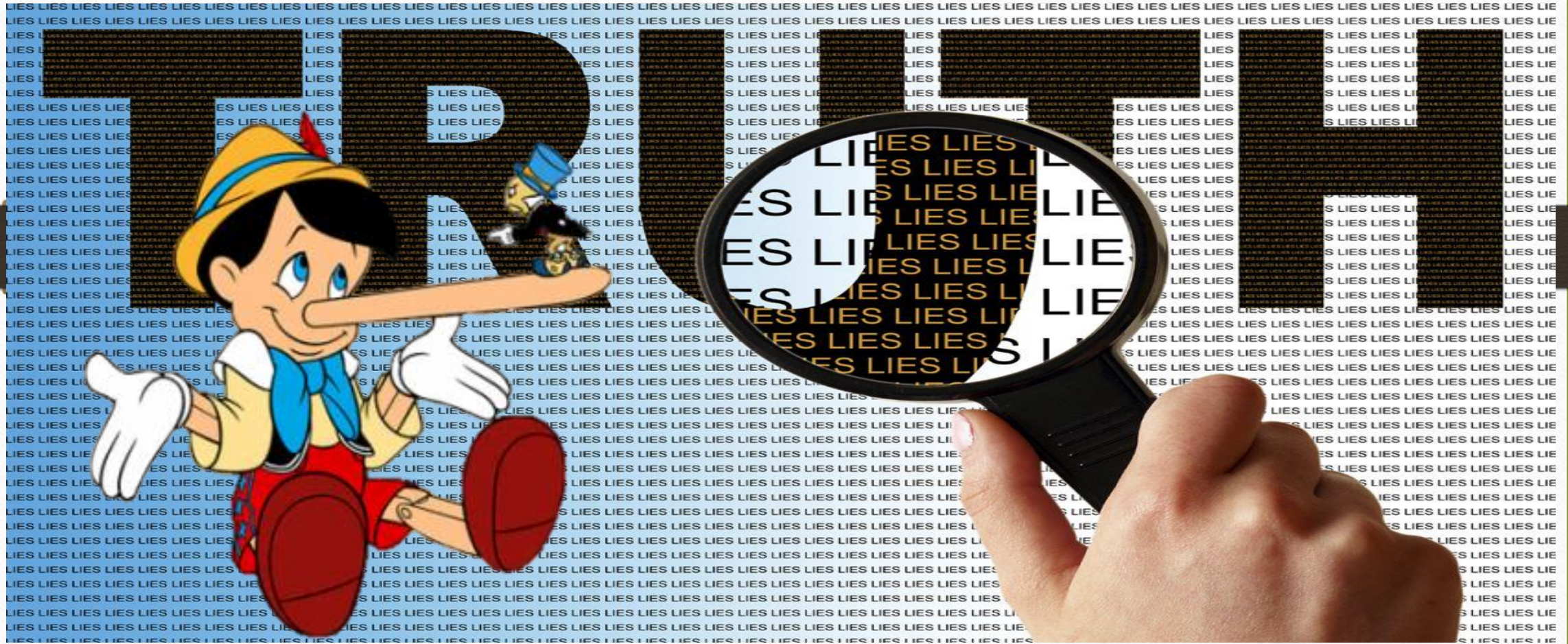


Benefits of a Jury Questionnaire



connect listen
mirror
identify respect
rapport relate
explain build

Benefits of a Jury Questionnaire



Benefits of a Jury Questionnaire

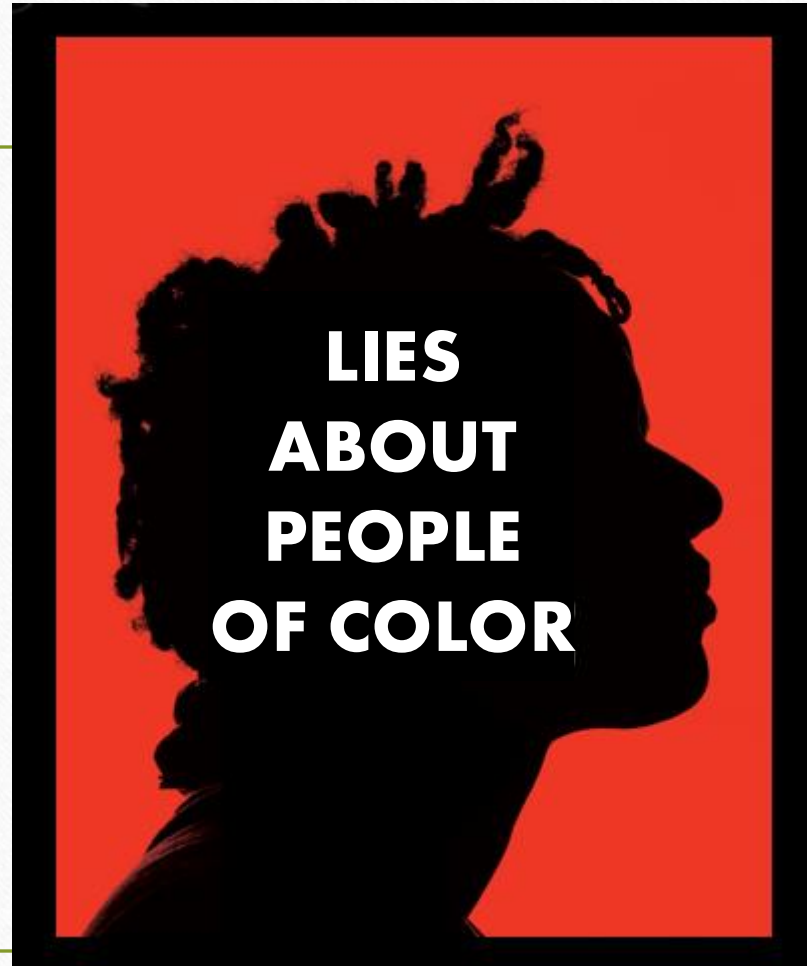


Drafting Questions



WHAT SCARES YOU ABOUT THE CASE ?

Drafting Questions





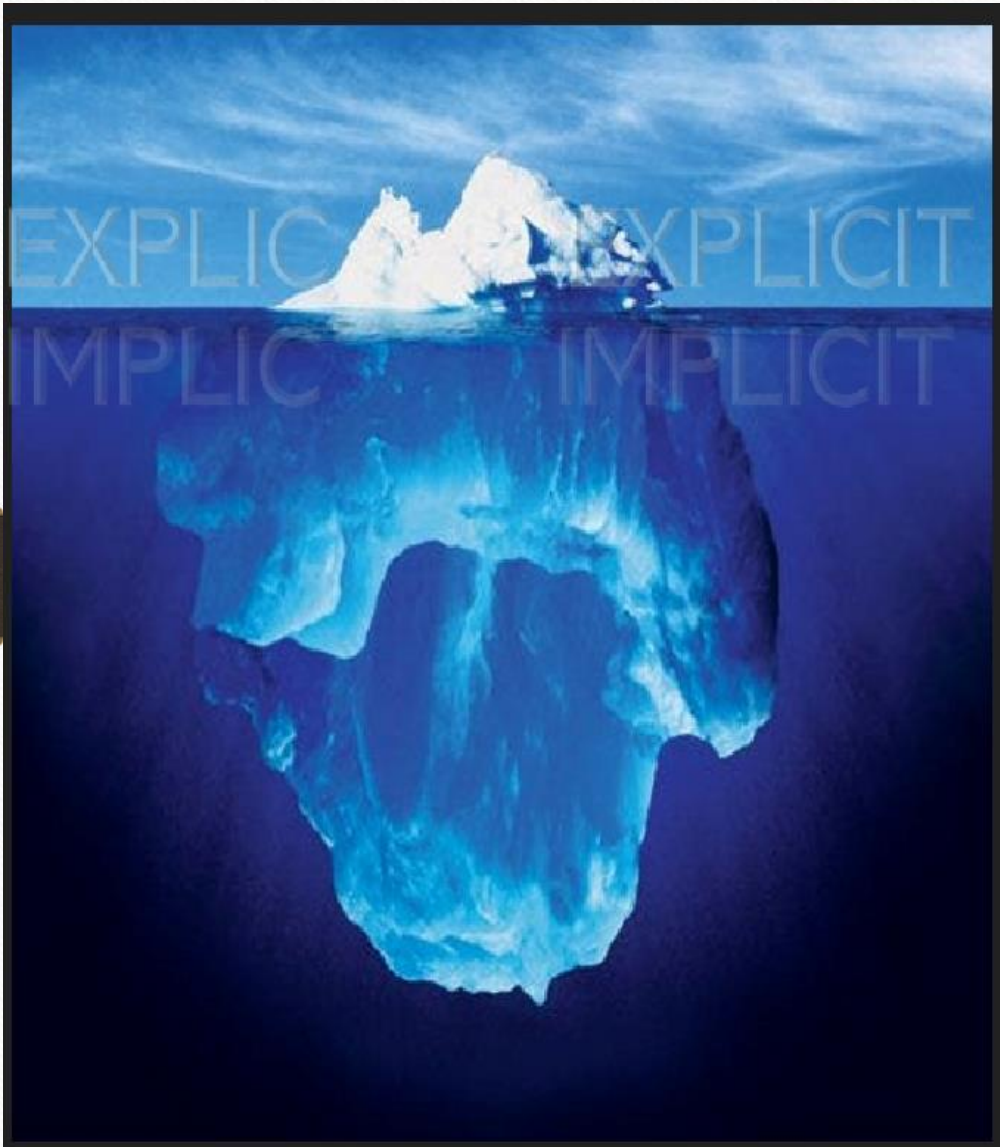
Racial Bias Question Ideas



- Tell me about a circumstance in which you or someone close to you relative or close friend witnessed or experienced some form of racial prejudice.
- Describe a circumstance in which you or someone you knew was accused of saying or doing something that someone has called racist or prejudice.
- What is your reaction to the phrases “All lives matter” and “Black lives matter”?
- How do you feel about how people of color are treated by the criminal justice system?

Drafting Questions

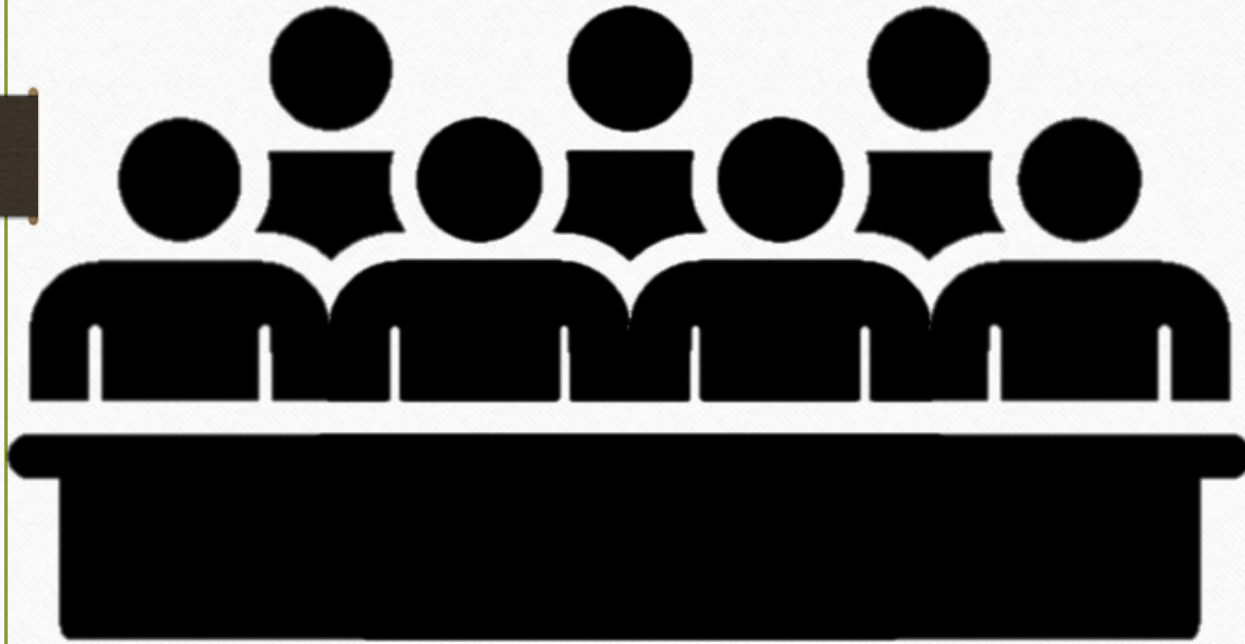




DISQUALIFICATION

WHAT
LIES
BENEATH

Prosecutorial Misconduct





Prosecutorial Misconduct

Cultural Differences

- Highlighting cultural or community norms to make them seem foreign, unusual, threatening, or suspicious
- Referring to a person or group in dehumanizing terms
- Emphasizing neighborhood or community as dangerous or crime-ridden

Prosecutorial Misconduct Stereotypes



- Making implicit racial associations using coded language or racial stereotypes
- Aligning appearance with racialized images of criminality
- Comments on mannerisms that feed into racial stereotypes
- Associating clothing with gang or street culture, symbols of menace, or lawlessness
- Using coded language to invoke fear without overtly mentioning race

Prosecutorial Misconduct

“Us Versus Them” Framing



- Contrasting community as safe and law-abiding versus dangerous one of the accused
- Framing person/group as an outsider geographically, socially, or morally
- Drawing attention to how a person/group speaks to imply they are from a different, less trustworthy world
- Imitating/Mocking/Highlighting a person's language, dialect, accent, or vernacular
- Humanizing alleged victim or witnesses extensively while barely referencing background of accused

Look for Coded Language



targeted “welfare queen”
innocuous “separate but equal”
“illegal immigrants” coded language
message
subtle **DOG WHISTLE**
controversial “America First”
political speech “Cadillac-driving”
supremacy



In-Court Questioning

- Be subtle and tactful in questioning to avoid triggering defensiveness
- Jurors are unlikely to openly admit bias, as most want to see themselves as fair and impartial
- Invite jurors to elaborate on their views using open-ended questions
- Be supportive and nonjudgmental of jurors, even if they express offensive views

In-Court Questioning



- Question: I understand you do not support Black Lives Matters from your answer on the jury questionnaire. Tell me more about that.
- Answer: Well, I just believe this whole DEI thing is liberal propaganda. I believe everyone should be treated equally

WHAT'S THE FOLLOW-UP?

For Cause Challenges





LOCKING JURORS INTO CHALLENGES FOR CAUSE

- This sounds like an important view/experience for you. How long have you felt that way?
- What experiences have led you to this position?
- Do your friends/family feel the same or differently from you?
- It sounds like you've felt this way for a while. How difficult would it be to set that deeply held view entirely aside?



PROTECTING CHALLENGES FOR CAUSE

- It sounds like you're not going to change your mind on this in the next few minutes of us talking, is that right?
- Even if you could change your mind, it would be a process.
- You don't know me, the prosecutor, or the judge, and as much as you respect the law, you wouldn't change your just for us, would you?
- These are your personal beliefs and they are respected in this courtroom, and you aren't going to alter them just because someone asks, are you?

Setting the Trap for the Malingering Racist





Washington Pattern Jury Instructions--Criminal
January 2024 Update

Washington State Supreme Court Committee on Jury Instructions

Part I. General Instructions

WPIC CHAPTER 1. Introductory Instructions

WPIC 1.01 Advance Oral Instruction—Beginning of Proceedings



In making these daily decisions, we may well rely upon generalities, even what might be called biases or prejudices. That may be appropriate as a coping mechanism in our busy daily lives but **bias and prejudice can play no part in any decisions you might make as a juror.**

WPIC 1.01



Washington Pattern Jury Instructions--Criminal
January 2024 Update

Washington State Supreme Court Committee on Jury Instructions

Part XIV. Concluding Instructions

WPIC 151.00 Basic Concluding Instruction



If during your deliberations, **you become concerned** that the **discussions are being influenced by preconceived bias or prejudice**, you must bring this to the attention of the other jurors so that the issue may be fairly discussed among all members of the jury.

WPIC 151.00

DRILLING DOWN ON THE SKEPTIC

If required, drill down further during voir dire:

- You indicated that you do not believe unconscious bias exists, right?
- The judge will instruct you that, if you believe unconscious bias is influencing the jury's decision, then you must bring it to the attention of your fellow jurors.
- Is it fair to say that you would never do this since you believe unconscious bias does not exist?





Setting the Trap Exercise

Q: What are your thoughts on Black Lives Matter?

A: All lives matter, blue lives matter!

GR 37 JURY SELECTION

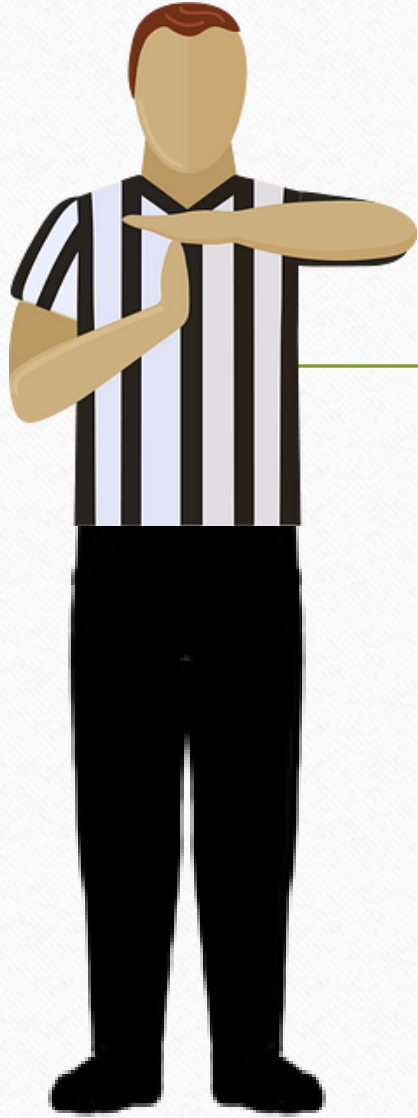
PROTECT

- Prevent the prosecutor from defeating your peremptory challenge to an unfavorable juror



DEFEND

- Ensure a diverse jury
- Prevent the prosecutor from using a peremptory to eliminate a favorable juror

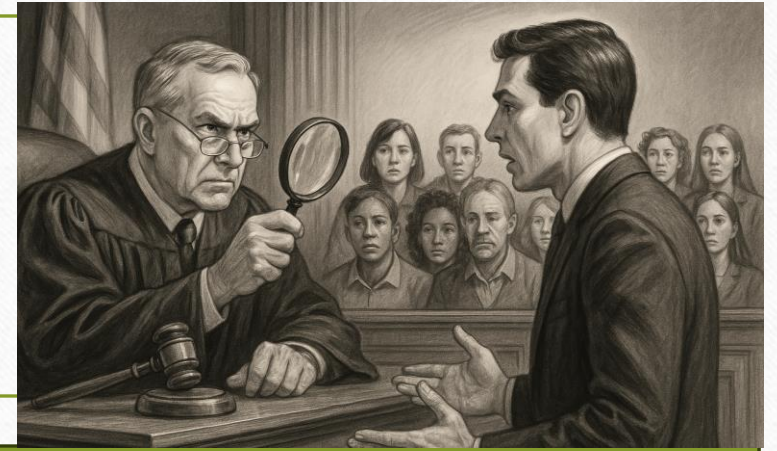


GR 37 – Objective Observer

If **objective observer could view race or ethnicity as a factor** in the use of the peremptory challenge, then the peremptory challenge shall be denied.

An objective observer is **aware that implicit, institutional, and unconscious biases**, in addition to **purposeful discrimination, have resulted in the unfair exclusion of potential jurors** in Washington State.

GR 37 – Court's Considerations



1. Number and type of questions that failed to question the juror on the alleged concerns or the types of questions that did ask about it
2. Did other jurors provide similar answers without challenge
3. Was the juror asked significantly more or different questions in contrast to other jurors
4. Is a reason disproportionately associated with race or ethnicity
5. Whether the party has used challenges disproportionately against a race or ethnicity in the present case or in the past

GR 37 – Presumptively Invalid

- Prior contact with law enforcement officers
- Distrust of law enforcement or a belief that law enforcement officers engage in racial profiling
- Close relationship with people who have been stopped, arrested, or convicted of a crime



GR 37 – Presumptively Invalid

- Living in a high-crime neighborhood
- Having a child outside of marriage
- Receiving state benefits
- Not being a native English speaker

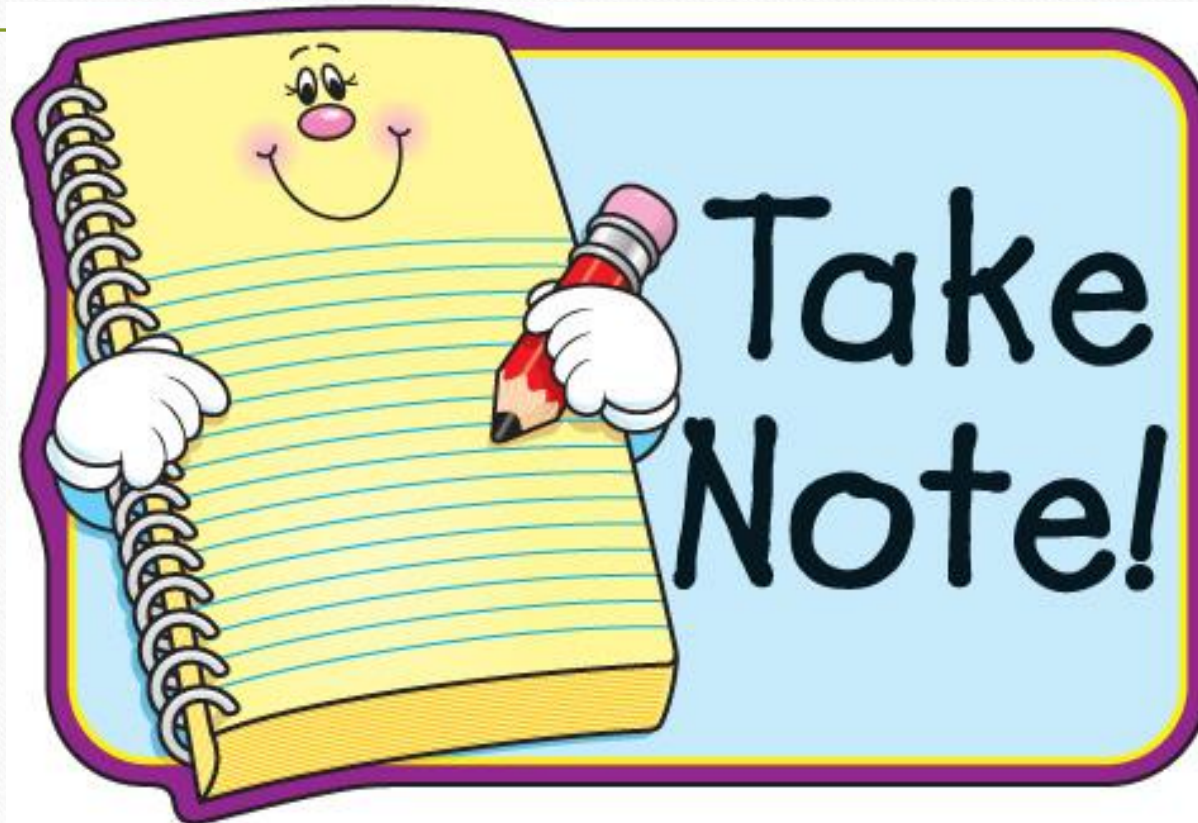


Getting Creative with GR 37

- Presumptively invalid reasons apply regardless of the race of the juror!
- *State v. Walton*, 29 Wn. App. 2d 789, 799, 542 P.3d 1041, 1049 (February 12, 2024).
- Having prior contact with law enforcement officers: arrests for similar incidents?

PRACTICALITIES

Don't go it Alone



SCORING JUROR ANSWERS



1	Most absolute perfect juror in the world	❤️
2	Great juror. Ideologically aligned. Gives great answers	❤️
3	Good juror with good answers. Mostly grasps issues. Wants To do the right thing. Generally aligned.	💖
4	Juror is unclear, gives mixed signals, doesn't give a clear view of their positions. Feels wishy washy.	🙄
5	Not great juror – Uncomfortable answers. Doesn't really grasp concerns. Leans towards off-base views.	💀
6	Bad juror –Bad answers. Ideological disconnect. Will convict.	💀
7	Most awful juror conceivable. Will always convict	💀

Scoring Answers Exercise



What are your thoughts about the role race plays in the criminal legal system?

SCORING JUROR ANSWERS

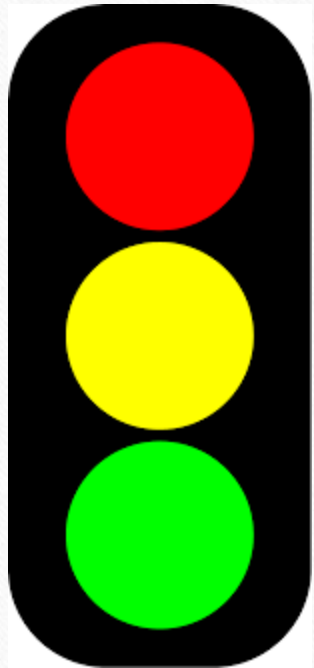
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Color Charting

JUROR	RATING	JUROR NAME
1	Hardship	Alpha, Mary
2	Hardship	Bravo, Mathew
3	5 Cause	Charlie, Mark
4	2	Delta, Ruth
5	4	Echo, Luke
6	2 Cause	Foxtrot, Rebecca
7	6	Gulf, Ester
8	4	Hotel, John
9	3	Indigo, Eve
10	3 Hardship	Juliet, Julia
11	4	Kilo, Timothy
12	5	Lima, Paul

Keep Track At All Times



<u>SEAT # 1</u>	<u>SEAT # 2</u>	<u>SEAT # 3</u> First Alternate	<u>SEAT # 4</u>	<u>SEAT #5</u>	<u>SEAT # 6</u>	<u>SEAT # 7</u>
 1	 2	 16	 15	 5	 6	 7
 8			 12	 14	 18	
 9				 19	 21	
 13						

Questions

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Answers

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