JURY SELECTION

BUILDING A TEAM

Forget everything you think you know

- **Improving requires being willing to work on yourself**
- The old way of seating jurors does not work
- Jurors consume crime as entertainment
- Stop thinking about what you need from jurors and thing about what they need from you

MYTHS

Some jurors are for State or Defense when they walk in the door.

It is better to take a juror that is hard to get along with, who I feel is on my side, over a juror who appears to be open minded and a team player.

It is better for a juror to keep an unfavorable opinion to himself, rather than expose it and taint the while jury pool.

The goal of jury selection is to indoctrinate and advocate for your case early in the process.

I can predict how a person things from their outward facing characteristics.

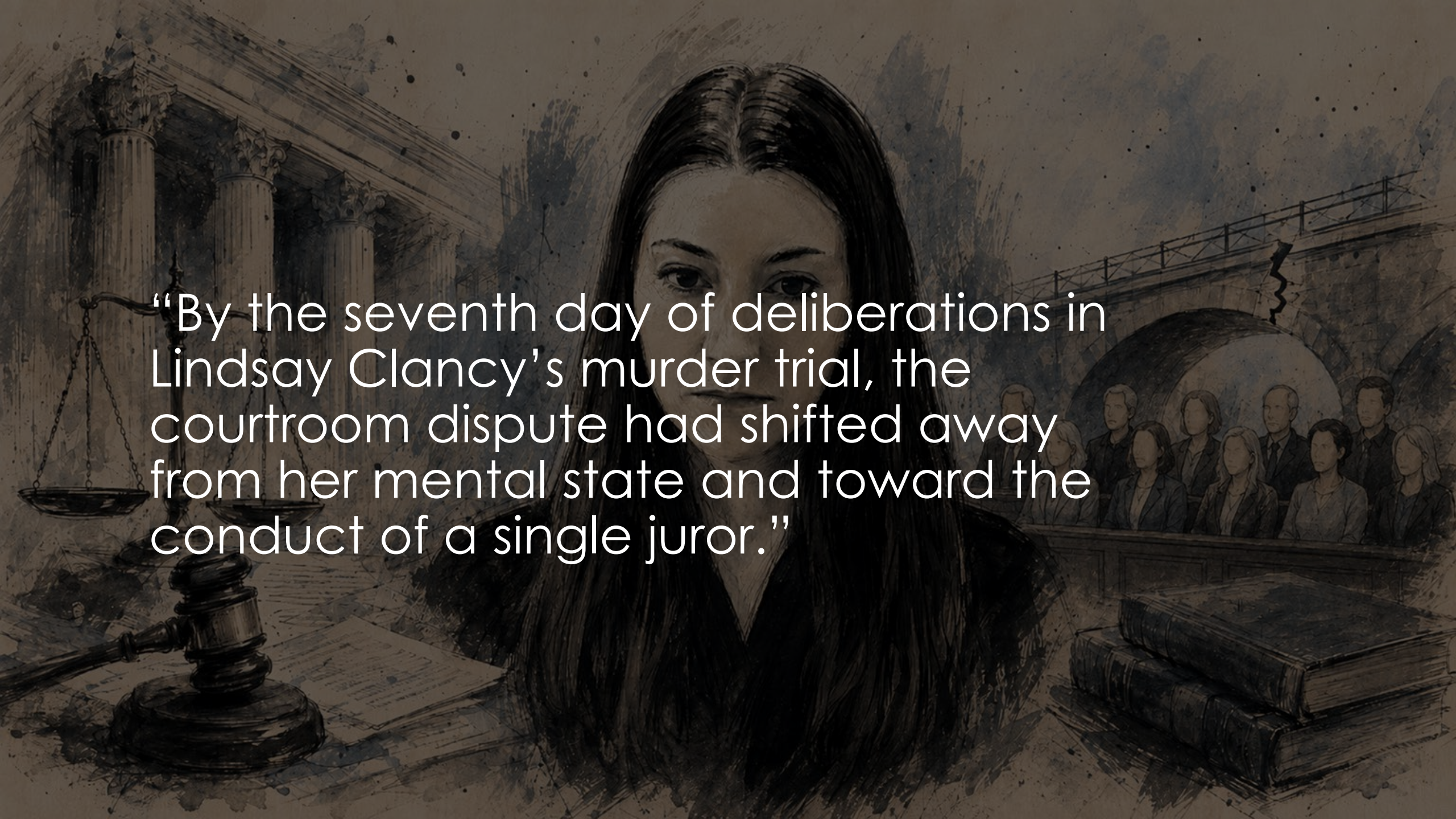
You can be the Hero

Current juror opinions:

1. There is no "right side"
2. Want to feel they are enforcing individual "rights"
3. Suspicious of the process, but cling to "brutal honesty"
4. Approach jury duty as a job, nothing more.

GOALS OF JURY SELECTION

- ~~1. Indoctrination~~
- ~~2. Advocacy~~
- 3. Deselection
  - Will not work well with others
  - Have trouble deciding


“By the seventh day of deliberations in Lindsay Clancy’s murder trial, the courtroom dispute had shifted away from her mental state and toward the conduct of a single juror.”

Make it okay to excuse yourself

CASE MAY NOT BE RIGHT FOR THEM

VS.

THEY ARE NOT RIGHT FOR THE CASE

PUT THEM AT EASE UP FRONT … LET THEM RELAX

Before we begin…

Three options for introductions…

Amazon Analogy

Familiar Face

Fair & Truthful

Familiar Face

Before we begin…

Who sees a familiar face?

If no one sees a familiar face: great, we are all getting to meet each other for the first time!

Set up Question

What does the idea of “Brutal Honesty” *mean to you*?

Even better: is that a person you can be brutally honest with?

Write down what they say.

Welcome them and sign them up

- Welcome to Jury Selection where we get a chance to talk to each other with brutal honesty (use the potential juror's definition) to determine whether this case is a good fit for you.

Who can be Fair and Tell the Truth

Show of hands:

Who here can be fair?

Who here is going to tell the truth?

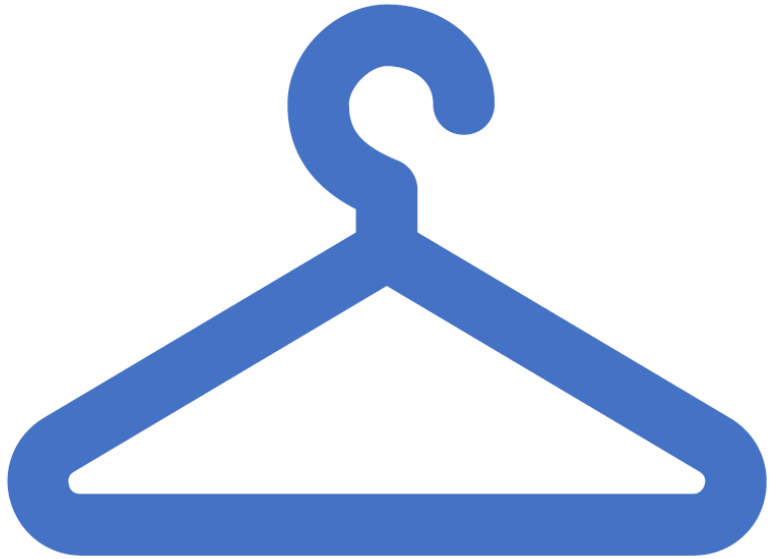
Get to what's important

Now that we've established everyone can be fair and is going to tell the truth, that is not what this process is about.

Instead, there may be reasons, because of who you know or life experiences that you may have, that this case is not a good fit for you.

Who’s ever ordered something online and, despite your best efforts to pick it out, it did not fit?

Not that you did not like it.



No matter what they say….

- Would it have been unfair for me to have asked you to walk around in that____ for a week.

- Seating a jury is the same way. Sometimes, because of our life experiences, a case does not fit you—so much so that it would be unfair for me to ask you to walk with me through it for the next few days.

Three Reasons

You know some of the parties.

You know some of the facts.

You have feelings or life experiences that might make it tough for you to give both sides an equal shot—despite your best efforts.

Questions

Atmosphere of disclosure

Atmosphere of disclosure – Using the correct language

~~Voir Dire~~ **Jury selection**

~~"Anyone here... ?"~~ **"How many of you... ?"**

~~"Who can't be fair... ?"~~ **"Who is going to blame me/my side...?**

~~Bias / Prejudice~~ **Fixed opinions / Strong feelings**

~~Agree~~ **Go along with**

Atmosphere of disclosure

"... even a little bit.“

...Tell me more."

Structure questions:

"Some people feel…"	*Tee it up*
[issue]	*Address the issue*
"Who here can go along with that, even a little bit?"	*Encourage a response*

DUI case

"Some people say it is not fair to convict someone of DUI unless the actual driving was poor or dangerous, despite what the evidence might show. How many people might go along with that, even a little bit?"

Physical Control case

"In Washington, the law allows a person to be convicted of a crime for being drunk behind the wheel of a car, even if the person is passed out or no one observed driving. How many people think that makes it too easy to convict someone? Even a little bit?"

Uncooperative victim

"For some people, asking them to consider a criminal case where the survivor refuses to cooperate with the legal process is asking too much. It would be impossible for that person to find a crime was committed despite what the evidence might show. How many here feel that way, even a little bit?"

African American defendant

"Some people do not want to be a part of a jury that convicts an African American of a crime despite what the evidence might show. How many here feel that way, even a little bit?"

More Examples:

- Some people feel that methamphetamine does not impair a person's ability to drive, how many people might go along with that, even a little bit?
- Some people say that field sobriety tests are designed for a person to fail, how many people might go along with that, even a little bit?
- Some people feel they cannot make decision based upon the opinion of impairment expressed by a single police officer, how many people might go along with that, even a little bit?
- Some people feel that you should never drive after consuming alcohol, how many people might go along with that, even a little bit?

Getting jurors to dismiss themselves

Belief system

1. "Thank you for your answer."
2. "Is it safe to say your answer was based on a belief system you hold?"
3. "Is it fair to say this is a firmly held belief?
4. "Would it be unfair to ask you to set aside your firmly held belief for this trial?"

Fixed opinion

1. "Thank you for your answer."
2. "Is it safe to say this is an opinion that you hold?"
3. "Is it safe to say that it's a fixed opinion, one that you shouldn't be asked to change for this trial?
4. "Would it be unfair to ask you to set aside your fixed opinion when considering this case?"

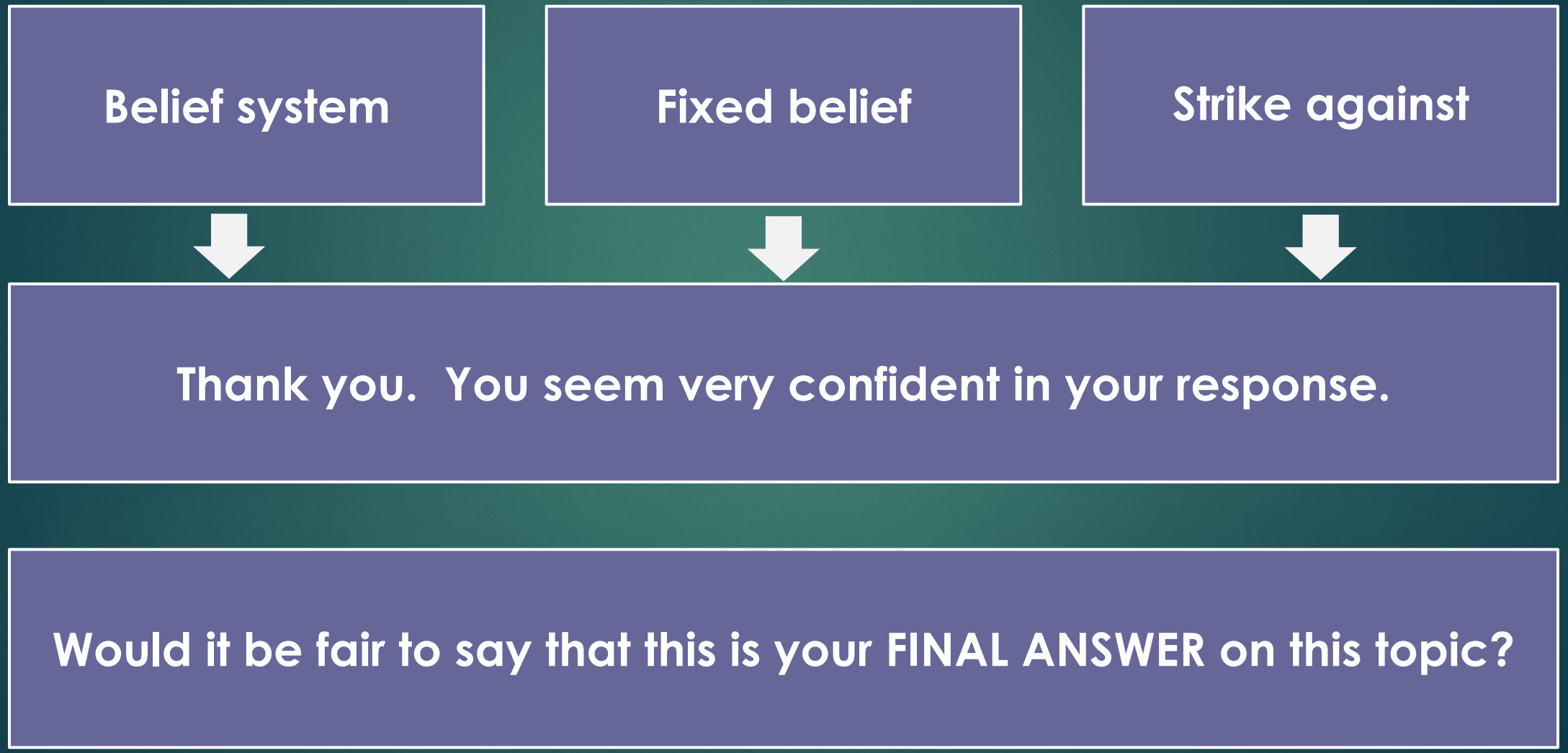
Strike against

1. "Thank you for your answer."

2. "How many others could go along with that, even a little bit?"

3. "Based upon that, is it fair to say that, despite your best efforts, my side might be starting out with a strike against it?

Drive it home



Move to strike FOR CAUSE

Equivocating juror:

- "It depends…"
- "I'm not sure…"

Equivocating juror

- "I hate to press you, but can you give me a definitive answer?"
- "This is my only time to talk with you. I can't check on you halfway through the trial."
- "If you got on a plane and the pilot said, 'I think we'll land safely' would you feel comfortable on the flight?"

High net-worth people:

"How would you handle this?"

"You're a…

[Doctor]

[Engineer]

"… we could all benefit from your perspective."

Medium net-worth people

"I'm not asking for your secrets, just your views."

"No one is going to judge you for your answer, or even remember this."

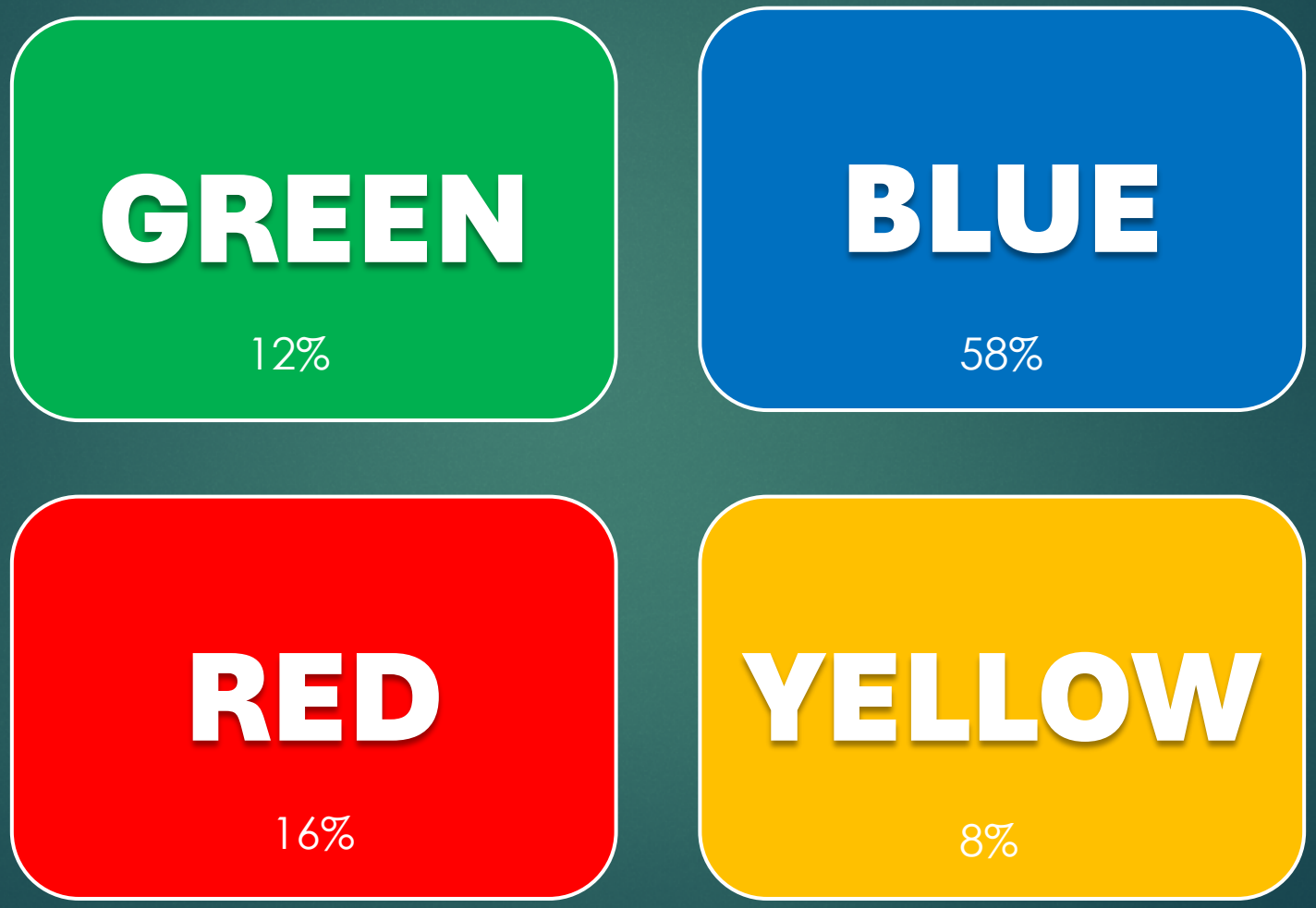
Lower net-worth people

"May I ask…"

"Can I level with you?"

"Do I have your permission…"

Colors - The 24% of the population that is yellow or red are not good for criminal juries.



Blue – Supportive / Compromising / Team-player type

Tendencies	Specialty	Dress	Body Language	Speech
Traditional Follower Loyal Group-Oriented Introverted	Supportive	Casual Subdued Passé	Concentric Non-Aggressive	Soft Slow "We" "I feel"

Blue – Supportive / Compromising / Team-player type

Typical Occupations	Environment	Hobbies	Media
Counselors Admin. Assistants Housekeepers Teachers Nurses Farmers Union Members Factory Workers	Group Identity Non-Leader	Family trips Camping Fishing Group activities	Sitcoms Novels Lifestyle magazines

Blue – Supportive / Compromising / Team-player type

Hot Button	Basic Motive	Potential Problem
Sociological / Group Needs	Supportive	Non-Leader Compromising

Blue – Supportive / Compromising / Team-player type

Good juror for criminal case?
GOOD Team Player

Green – Analytical / Status-Minded / Leadership

Tendencies	Specialty	Dress	Body Language	Speech
Orderly Resist Change Serious Critical Individualistic Introverted	Technical	Formal Power	Concentric Aggressive	Slow Precise “I” “I think”

Green – Analytical / Status-Minded / Leadership

Typical Occupations	Environment	Hobbies	Media
Lawyers Engineers Doctors Accountants Coders Editors Clergy Professors	High Status Authority	Individualized Collecting	Documentaries Educational Historical News Nonfiction Self-Help

Green – Analytical / Status-Minded / Leadership

Hot Button	Basic Motive	Potential Problem
Psychological (Self) Needs	Social Power	Unemotional Too Factual Uncompromising

Green – Analytical / Status-Minded / Leadership

Good juror for criminal case?
GOOD Presiding juror candidate

Red – dominant / competitive type

Tendencies	Specialty	Dress	Body Language	Speech
Dominant Competitive Task-Oriented Direct Individualistic Extrovert	Controlling	Informal Casual Loud Athletic	Aggressive Dominant Short Attention	Loud Harsh Direct "I" Oriented "I Believe"

Red – dominant / competitive type

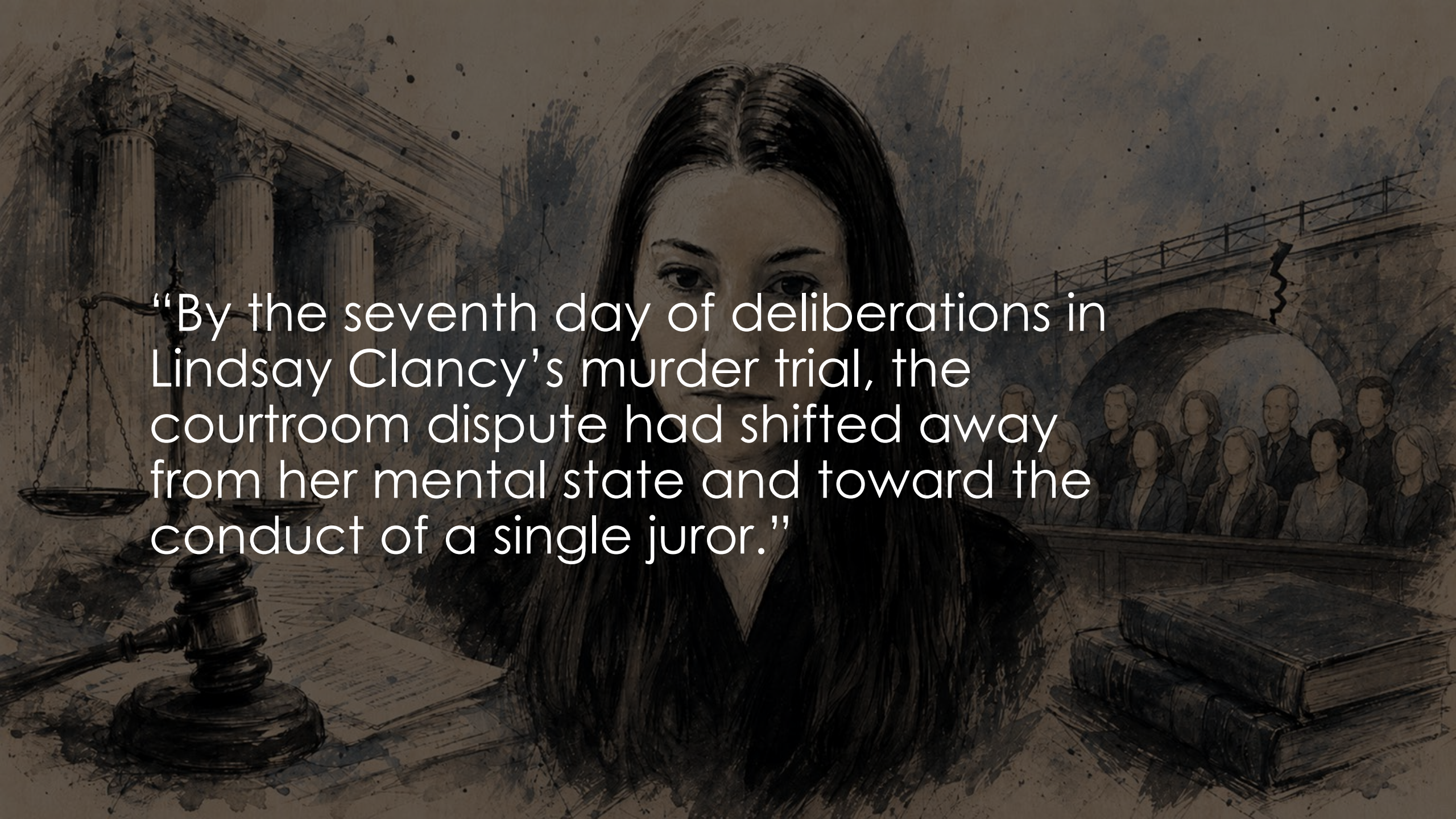
Typical Occupations	Environment	Hobbies	Media
Entrepreneurs Commissioned Sales Athletes Construction	Personal Challenges Power & Authority	Competitive Sports Racing Thrill Hunting	Light Short & Concise Sports Cop Shows Fast-Moving Action

Red – dominant / competitive type

Hot Button	Basic Motive	Potential Problem
Psychological (Self) Needs	Personal Independence	Dominating Controlling

Red – dominant / competitive type

Good juror for criminal case?
BAD 1-Person Jury


“By the seventh day of deliberations in Lindsay Clancy’s murder trial, the courtroom dispute had shifted away from her mental state and toward the conduct of a single juror.”

Yellow – emotional / free thinking type

Tendencies	Specialty	Dress	Body Language	Speech
Flexible Fun-Loving People-Oriented Creative Social Extroverted	Socializing	Fashionable Artistic Wild	Expansive Open Friendly	Fast “We” Oriented “I see” “I imagine”

Yellow – emotional / free thinking type

Typical Occupations	Environment	Hobbies	Media
Designers Musicians Writers Artists Social Scientists	Group Challenges Democratic	Social sports Painting Writing Decorating	Long Novels Romantic Literature Fantasy Current trends Prime-Time Dramas Sci-Fi

Yellow – emotional / free thinking type

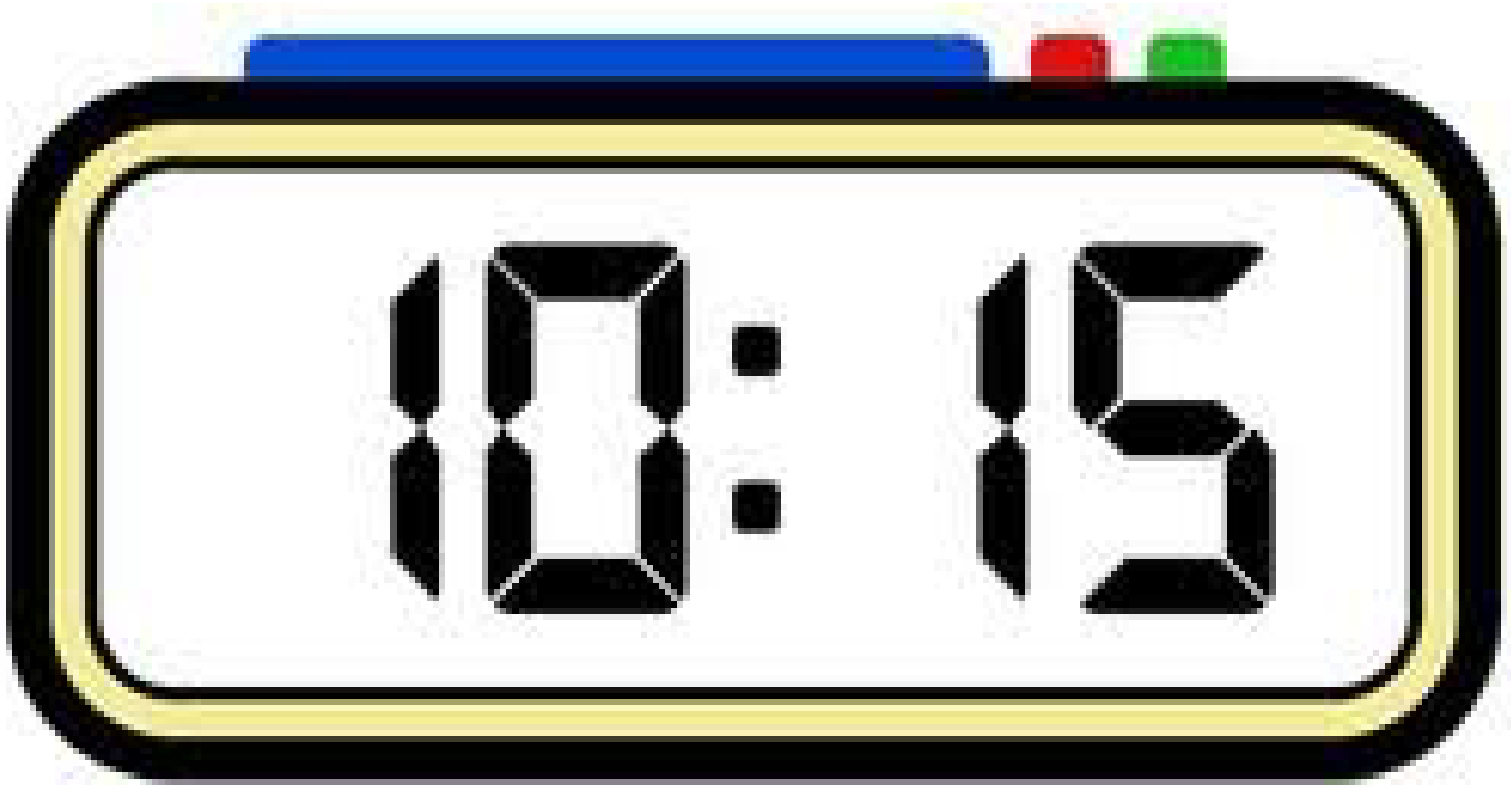
Hot Button	Basic Motive	Potential Problem
Sociological (Group) Needs	Socially Creative	Indecision Too Empathetic

Yellow – emotional / free thinking type

Good juror for criminal case?
BAD Cannot Decide

Colors

So… what do I ask?



FINDING THE "FRICTION" POINT

TSRP MICHELLE RUTHERFORD

Argument Notes

List	List all counts
Consider	Consider each element individually
Include	Include all enhancements or special verdicts
Identify	Identify all evidence of that element & possible defense points of attack

ELEMENTS	STATE	DEFENSE

ELEMENTS	STATE	DEFENSE
6TH DAY OF MARCH 2021 THE DEFENDANT DROVE A MOTOR VEHICLE		--
UNDER THE INFLUENCE OR AFFECTED BY INTOXICATING LIQUOR A person is under the influence of or affected by the use of marijuana or drugs if the **person's ability to drive a motor vehicle is lessened in any appreciable degree.**	**D PROVIDES BARE MINIMUM OF REQUIRED INFORMATION IN TRAFFIC STOP** Provides license and ID Refuses to get out his car unless he ordered to do so REFUSAL OF FIELDS DENIAL OF DRINKING REFUSAL TO DISCUSS WHERE HE WAS COMING FROM OR WHERE HE'S HEADED BAC REFUSAL	PASSENGER WAS REALLY THE UNCOOPERATIVE ONE •D not impaired, he's showing off to buddy •D not impaired, he's protecting his own rights REFUSAL is some reason other than consciousness of guilt OTHER EXPLANATIONS FOR IMPAIRMENT •Odor is passenger •Eyes have multiple possible explanations •Many reasons not to answer questions •Speeding doesn't mean impairment •Can't hear enough slur OPINION OF IMPAIRMENT IS WEAK •Trooper on video saying "could be possibly"
Snohomish County		
REFUSAL Positive unwillingness to comply with request		
JURY INSTRUCTIONS OF NOTE		
#7 Lawyers statements comments and remarks are not evidence		

Argument Notes

Organize complex facts into individual arguments

Prepare to suggest the reasonable inference you want the jury to make from those facts

Case Study – State v. Johnson 29 Wn. App.2d 401 (2024)

- Uses victim's head like a punching bag = BRAIN BLEED
  - Delay in reporting
  - No visible injuries
  - Brain bleed usually diagnosed postmortem
  - Admitted use of meth
  - Prior convictions for crimes of dishonesty
  - Prior unreported assaults
  - Prior recantation actions
  - Allegations that she committed fraud

Organizing Argument Notes: Intentional Assault

TIMELINE OF EVENTS

- 12/28 release from custody, D and V together until 911 calls
- 2/1/21 - "the fight" D talks about with Hoelzel and Atkins
- 2/1/21 - Ex 16 photo and Video Ex. 15
- 2/2/21
- 12:35 PM - takes photo, exhibit 17
- ~12:40 PM - first dispatch of aid crew
- ~12:52 PM - aid crew first on scene
- ~1:08 PM - aid crew departs scene
  - Headache (nothing on substance use)
- ~little after 1:20 pm - aid crew next dispatch
- V is vomiting now
- ~1:30 - aid crew 2nd response
- ~1:44 - transfer patient to another crew to go to hospital
  - Primary impression is substance use: meth/alcohol

MOTIVE TO ASSAULT

- He texts she gave up on him on Aug 18 (SMC conviction)
- He is accusing her of fraud while he was in jail
- He is accusing her of cheating (in general)
- He is accusing her of "talking spicey"
- He says they were continuously arguing or having sex
- His conduct on the videos ("Ike Turner Treatment")

Organizing Argument Notes: Intentional Assault

ADMISSION TO VIOLENCE

- He claims she assaulted him, punched in face like 20 times and busted lip - EX 17 shows no injury on his face

CONDUCT ON 911 CALLS

- Hid the chief complaint of headache in 17 minute call
- Starts talking about a stroke, even though she never thought that
- Claims she is falling all over the place
- Denies drug use

Organizing Argument Notes: Intentional Assault

HER CONDUCT IS CONSISENT WITH ABUSE VICTIM

- DOESN'T REPORT
  - Persistently denies trauma at hospital, does not blame him for the cause of the headache
  - Previously refused to identify D as person who strangled her
- Blames herself for taking aspirin - incorrectly
  - Previously blamed herself / PTSD for August 18 assault
- Begins to understand her injury and gets mad
- Doesn't report until her mom makes the call
- Expresses anger/accuses him of assault
- Does NOT stop taking to him (promised his daughter)
- Does NOT stop trying to help him find a job

- Prior convictions / she admitted
- She was consistent about the mechanism of assault - used her head like a punching bag
- She recognized the MORTAL THREAT this time

GASLIGHTING / PERCEPTION MANAGEMENT

- 911 call by hiding leading symptom and throwing out rash and other things to confuse the issue
- Recorded call from jail where he tells her it is an aneurism
- Telling Detective Atkins she is very violent and assaulted him
- Content of the text messages
- ~~D claimed motive to lie was to keep him from "figuring out" the fraud, not claims it was to keep her out of trouble at work or with probation~~
- ~~He accuses her of doing the things he has done to her~~
  - ~~Assault~~
  - ~~Fraud~~

Organizing Argument Notes: Intentional Assault

D'S LIES TO DETECTIVE

- Told Atkins Sarah Dreben told him Nicole was complaining about a headache 2/1. Sarah never spoke with D prior to 2/2
- First says she made him call 911, then he called even though she did not want him to
- Claims he is the real victim of abuse

TEXT MESSAGES

Ex 43

Ex 44

Ex 45

- Discussion of cheating
- **V says you would end up hurting me**
- **Asks - will still be my wife - p. 4**
- **"you should kill me" "not should but would"**
- He accuses of her "pick and choose your times to slow your words and act so vulnerable"
- Loyalty test - "I really thought you did love me car about me" - fools mistake
- She calls him a fuck tard
- "I'm over your abusive hitting me in the head bullshit"
- "you think you can control women by hitting them"
- Unrelated emotional abuse - Threatens to block her - blames her for messing up her own kid - p. 23
- "u tried to kill me by beating my head and causing a brain bleed"
- "I shouldn't have taken the aspirin but the damage was from you" - p. 27

Ex 42

Organizing Argument Notes: Reckless Infliction of Substantial Bodily Harm

- AGREEMENT TRAUMA CAN BE A CAUSE
- TIMING OF SYMPOMS
- NEUROSURGEON SUSPECTS TRAUMA
- OTHER MEDICAL CAUSES RULED OUT

- PROXIMATE CAUSE ARGUMENT
- MOTIVE TO LIE
- INCONSITENCIES IN STORY
- EXAGGERATING SYMPTOMS
- LACK OF PHYSICAL EVIDENCE
- D SHOWS GENUINE CONCERN FOR VICTIM
- DELY IN REPORTING

FINDING FRICTION POINTS

1

Watch for any elements that hinge entirely on a single piece of evidence

2

Look for theme to possible defense arguments

3

Embrace the "warts"

THANK YOU

HOW MANY OF YOU HAVE QUESTIONS?

WHO WOULD LIKE TO GO OUT AND TRY THESE TECHNIQUES, EVEN A LITTLE BIT?

Crafting a Winning Closing Argument

Embrace	Embrace that your goal is fair and just decision
Give	Give them a reason to convict – motivate the jury
Be	Be fair and honest
Limit	Limit objections in closing to your strategic advantage
Appeal	Appeal to different learning styles
Make	Make a good record
Do not swing	Do not swing at a pitch in the dirt