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D-I-S-C: Who's Your Jury Going To Be?

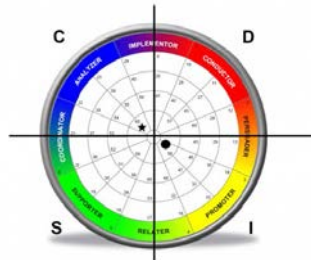
When planning case themes and deciding what evidence you are going to introduce in your trial, you should be asking yourself "What kind of people will likely be on the jury at the end of jury selection?"

This is a slightly different question than "What kind of people would I like to be on my jury?" The reality is, we rarely get the jury we want. We have to prepare to try the case to the likely panel, not the ideal panel. What kind of people will those be, and how do you meet their needs?

First, there is some good science out there that tells us there are not all that many kinds of people when you look at behavior, rather than personality.

"**DISC**" is a behavior assessment tool based on the theories of William Moulton Marston (a lawyer and a psychologist), which centers on four different behavioral traits:

- **D**ominance
- **I**nfluence
- **S**teadiness
- **C**onscientiousness



DISC is not a personality assessment, but rather an assessment of behavior. It measures how a person is likely to behave in a given circumstance.

You may be familiar with this assessment; many companies use the DISC as a way to screen potential employees. If you have taken it, or had others you know well take it, I'll bet you were surprised at how accurate and insightful it was!

But what does DISC have to do with jury selection or trial techniques, given that you are not going to be able to give potential jurors a DISC test?

A lot, as it turns out. It is hard to read people's minds; it is easier to read their behavior. If you accurately read and categorize jurors' behavior, you will have a better idea how they are going to process information during trial and how they will interact with other jurors during deliberations.

You don't have to give the test to get the advantage of the DISC research. What matters is what the DISC theory tells us about how to identify people as one of the four groups, and what being a member of that group tells us about their likely behavior.



Jeffrey D. Boyd, Esq.

"Jurors think an 'accident' is an event for which no one is legally at fault"

Services provided by Boyd Trial Consulting include:

- Interactive Focus Groups
- Mock Trials
- Developing Themes
- Development of Voir Dire techniques

First let's look at the groups, and then at what they mean to your trial preparation and your voir dire.

“D”s (Dominance) and “I”s (Influence): are OUTGOING and DIRECT

How do you identify them?

- Faster paced
- Talk more
- Louder speech
- More inflection in voice

D - DOMINANCE

Direct and Decisive
Ds are strong-willed and strong minded

They focus on “What”
Their priority is GOALS and RESULTS

I – INFLUENCE

Talkers
“People people” who like participating on teams, sharing ideas, and energizing others
Interactive, Optimistic, and Outgoing

They focus on “Who”
Their priority is PEOPLE and APPROVAL

“S”s (Steadiness) and “C”s (Conscientious): are RESERVED and INDIRECT

How do you identify them?

- Slower paced
- Ask more, assert less
- Softer speech
- More monotone

S - STEADINESS

- Sympathetic and Cooperative
- Helpful people who like working behind the scenes, performing in predictable and consistent ways, and being good listeners

They focus on “How”
Their priority is COOPERATION and STABILITY

C - CONSCIENTIOUS

Concerned and Correct
Sticklers for quality, like planning ahead, like employing systematic approaches, and checking and re-checking for accuracy

They focus on “Why?”
Their priority is QUALITY and ANALYSIS

- Evaluation of Liability, damages, defenses, exhibits, demonstrative evidence, and witnesses/parties (live or videotaped)
- Witness Preparation
- Assistance with jury selection, in person, at trial
- Development of Supplemental Jury Questionnaires

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Now that you have a sense of the groups, how do you apply this understanding to voir dire, to case theme, and to presentation of evidence?

1. Your jury is likely to be made up of the quiet ones: the “S”s and the “C”s. Plan to try your case to them.

It is my observation, based on conducting and observing countless voir dire, that **the more a potential juror talks in voir dire, the more likely it is that they will be kicked off** (no matter what they talk about).

As people talk more, the lawyers begin to feel they know more about them, which translates into feelings about them, which translates into a judgment about whether they are good or bad for their party, which translates into preemptory challenges. One side or the other will almost always kick off the people with the highest “word count.” The quiet ones – the ones you don’t know enough about to have strong opinions - slide by and are seated.

This means **the majority of your jury will be the quiet ones**: “S”s and “C”s. Therefore, you have to prepare your case so that it appeals to the quiet ones. As much as plaintiff’s lawyers love a strong emotional appeal, the “S”s and the “C”s are looking for data, not passion.

2. Strong jurors wield undue influence. They have to go.

Many jurors do NOT have strong opinions about the issues in a civil trial, and most jurors want to avoid conflict.

Because of that, **strong jurors (the “D”s and “I”s) have more influence than you probably think.** The strong ones will push hard for the weak ones to go their way. The weak ones just want to get along.

I very firmly believe that you never know for sure how any one juror will vote, based on the limited bit of voir dire we get these days. It’s hard to identify with certainty the jurors who, at the end of the case, will be good for you or bad for you. We all think we can (we are all above average, right???), but if you reflect on the fact that it takes people a couple of months of visits to their mental health counselor before they will open up enough to say they didn’t like their father, how far are you going to get in a couple of minutes of voir dire? We don’t have the time to get to know our jurors at the level where value judgments are going to be made, even if they wanted to share those feelings with strangers in suits in front of 40 other people.

However, **you can usually tell the strong ones from the weak ones.**

Combining these two observations leads to one of the few rules I believe is an absolute for jury selection: **kick off the prospective jurors who are markedly “stronger” than the rest.**

Who does that leave? The “S”s and the “C”s, the ones who are Sympathetic and Cooperative, Concerned and Correct, who focus on “How” and on “Why,” whose priorities are COOPERATION, STABILITY, QUALITY, and ANALYSIS. They want exactitude over bombast. They want the facts, not the emotions. Plan your case accordingly.



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