

**CLE HANDOUT** | 12/16/2022| Cindy Arends Elsberry

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**Tackling Bias in Jury Selection: Putting GR 37 to Work**

**Additional Resources-**

**Proposed GR 37 Jury Selection Workgroup Final Report,** found [here](https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/OrderNo25700-A-1221Workgroup.pdf)**.**

**Court videos for jury on implicit bias: Does your court use one of these? If not, would you like them to?** This can facilitate an open conversation about implicit or unconscious bias in voir dire.

* Federal District Court, Western District of WA., link to court video:  [https://www.wawd.uscourts.gov/jury/unconscious-bias](https://nam11.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.wawd.uscourts.gov%2Fjury%2Funconscious-bias&data=04%7C01%7CCindy%40defensenet.org%7C353cd43de67d4a74419e08d9ec2b0b49%7Cbe3cfa1802454c699d35d3362f0ba373%7C0%7C0%7C637800491915882580%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=YP%2FjPnyBEtt5GR4g1E0tsgsqmDGK5FziJy50iknKGB4%3D&reserved=0)
* King Co Superior Court (used in Seattle and Kent) – [Jury Video on Implicit Bias](https://www.youtube.com/watch?v=_su-KAVd274)

**Washington State OPD**: The Washington State Office of Public Defense [Disproportionality Advocacy Program](https://www.opd.wa.gov/index.php/program/trial-defense/12-pd/223) (many resources for addressing racial bias and disproportionality in legal systems). Find resources on Racial Bias and Jury Selection issues [here](https://www.opd.wa.gov/index.php/program/trial-defense/12-pd/223).

**Articles and research on jury diversity**

* [Impartial and Representative Juries](https://strengthenthesixth.org/focus/Impartial-Representative-Jury), (strengtheningthesixth.org)
* Race and juries, various publications. [https://as.tufts.edu/psychology/racial-equity-diversity-lab](https://nam11.safelinks.protection.outlook.com/?url=https%3A%2F%2Fas.tufts.edu%2Fpsychology%2Fracial-equity-diversity-lab&data=04%7C01%7CCindy%40defensenet.org%7C552b46929123423930c208d9ea4f9cf5%7Cbe3cfa1802454c699d35d3362f0ba373%7C0%7C0%7C637798449936442236%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=8pRzaHKnGlL89dTVV3ryr1J3AIWvnt9Tj2%2F63oWcrEM%3D&reserved=0)
* Diverse Juries Make Better Decisions, [https://sparq.stanford.edu/solutions/diverse-juries-make-better-decisions](https://nam11.safelinks.protection.outlook.com/?url=https%3A%2F%2Fsparq.stanford.edu%2Fsolutions%2Fdiverse-juries-make-better-decisions&data=04%7C01%7CCindy%40defensenet.org%7C552b46929123423930c208d9ea4f9cf5%7Cbe3cfa1802454c699d35d3362f0ba373%7C0%7C0%7C637798449936442236%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=Q%2FoT0D61twHUA0osftxGOSUSx7OLk6B85k5uuYwk0Z0%3D&reserved=0) (full report [Sommers\_2006.pdf | Powered by Box](https://stanford.app.box.com/s/4srbkxjhfkxqhm2g6ln5pv2q6wxwhcf0))
* Maddox, K. B., & Sommers, S. R. (2016). Implicit bias in daily perceptions and legal judgments. University of Michigan Journal of Law Reform, 50, 723-736.
* [Why a Jury’s Racial Composition Matters (voanews.com)https://www.voanews.com/a/usa\_all-about-america\_why-jurys-racial-composition-matters/6204882.html](https://www.voanews.com/a/usa_all-about-america_why-jurys-racial-composition-matters/6204882.html)
* On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations, Journal of Personality and Social Psychology, Vol. 90 No. 4 , 597-612 (2006), found at [https://www.apa.org/pubs/journals/releases/psp-904597.pdf](https://nam11.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.apa.org%2Fpubs%2Fjournals%2Freleases%2Fpsp-904597.pdf&data=04%7C01%7CCindy%40defensenet.org%7C552b46929123423930c208d9ea4f9cf5%7Cbe3cfa1802454c699d35d3362f0ba373%7C0%7C0%7C637798449936442236%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=bsgyPeBcemQpvpngzb%2Bo2WFEg5P0A8GgThIl1gf7RCw%3D&reserved=0)

**Washington Pattern Jury Instructions (WPICs)**

Washington’s pattern instruction [WPIC 1.01](https://govt.westlaw.com/wcrji/Document/Ief97ac11e10d11daade1ae871d9b2cbe?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) – Introductory Instruction Criminal Practice includes language warning jurors about implicit bias.

The purpose of this process is to make sure that we select a jury that is free from any outside or pre-existing bias that might interfere with the jury's ability to fairly decide the case based on the evidence and the law that you receive in this courtroom.

It is important that you discharge your duties without discrimination, meaning that bias regarding the race, color, religious beliefs, national origin, sexual orientation, gender, or disability of any party, any witnesses, and the lawyers should play no part in the exercise of your judgment throughout the trial. These are called “conscious biases”—and, when answering questions, it is important, even if uncomfortable for you, to share these views with the lawyers.

However, there is another more subtle tendency at work that we must all be aware of. This part of human nature is understandable but must play no role in your service as jurors. In our daily lives, there are many issues that require us to make quick decisions and then move on. 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. Your decisions as jurors must be based solely upon an open-minded, fair consideration of the evidence that comes before you during trial.