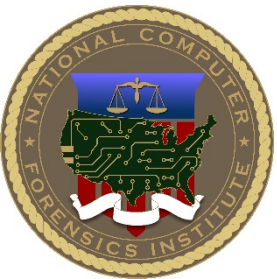


# *DIGITAL EVIDENCE FOR PROSECUTORS*

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## *JURY SELECTION*

*NATIONAL COMPUTER FORENSICS INSTITUTE - 2018*

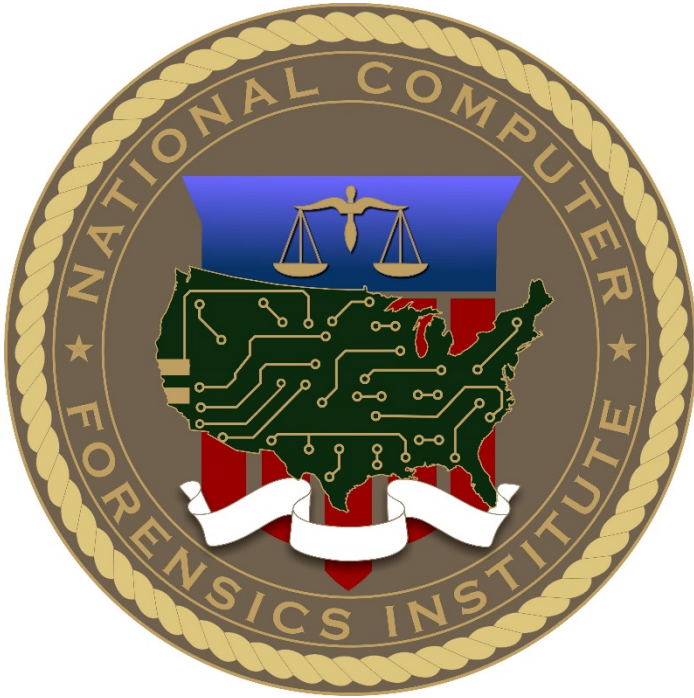


# TOPICS OF DISCUSSION

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- Jury selection in technical cases
- Traits of effective jurors in technical cases
- Sample voir dire questions for jurors





# *JURY SELECTION IN TECHNICAL CASES*



# IMPORTANT NOTE

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- Jury Selection is an art
- Each jurisdiction handles it differently
- Some of the techniques talked about in this lecture may not be allowed in your jurisdiction
  - Before using, check with your ethics provider
  - This document is not legal advice



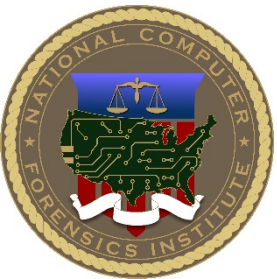


# BECOME A STUDENT OF HUMAN NATURE

---

“Choosing jurors is always a delicate task. The more a lawyer knows of life, human nature, psychology, and the reactions of human emotions the better he is equipped for the subtle selection of his so-called twelve men, good and true.”

-Clarence Darrow



# DEVELOP YOUR THEME

---

- *The more complex your case, the simpler the theme*
- *K.I.S.S*
- Themes are basic
  - Human emotions and experiences
  - Greed
  - Lust
  - Betrayal
  - Innocence lost





# DEVELOP YOUR THEME

---

- Revenge
- The disgruntled employee hacker
- Anger
- The privacy warrior
- Pride
- The system
- Payback
- The jilted lover





# PRO-PROSECUTION JURORS

---

- Generally law abiding
- Comfortable with group discussion and decision making
  - Homeowners
  - Educated
  - Business owners
  - Parents
  - Military
  - Conservative
  - Older (depending on case)

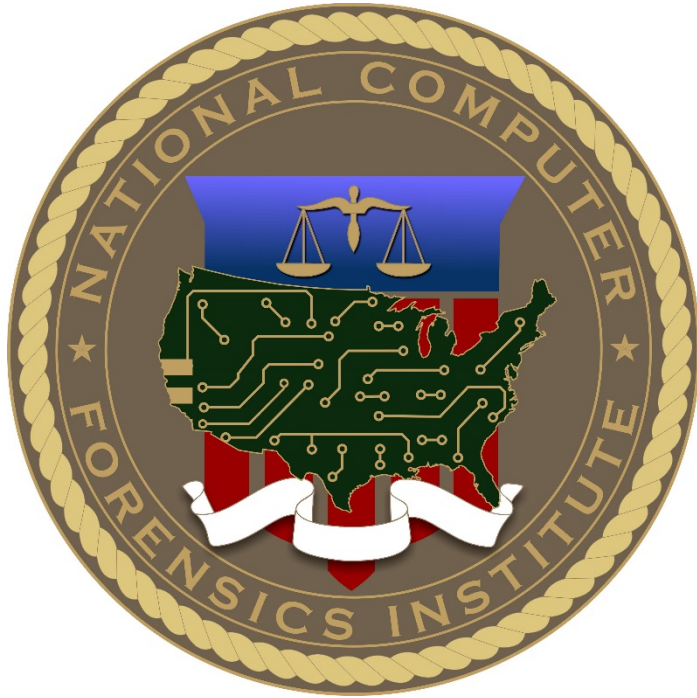


# TECH-SPECIFIC JURORS

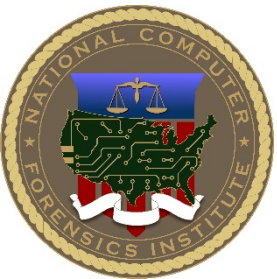
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- A little younger
  - But not too young
  - Look for life experience
- A little more educated
  - But not too academic
  - Look for use of education in life
- Some technical knowledge
  - But not enough to second guess witnesses





*TRAITS OF EFFECTIVE JURORS  
IN TECH CASES*



# TRAITS OF EFFECTIVE JURORS IN TECH CASES

---

- Values online rights and privacy
- Does not use the internet to steal
- Uses digital presentation tools
- Makes group decisions in daily life
- Comfortable with authority & personal limits
- Views tech as a tool, not the solution







# VALUES ONLINE RIGHTS AND PRIVACY

---

- How a juror treats the privacy of their own data will tell you about
  - Their trust of computer data
  - Their comfort level with a computer case
- *What do you use your computer for?*
  - Remind - digital photos
  - Blogs and diaries
  - Finances and taxes





# VALUES ONLINE RIGHTS AND PRIVACY

---

- *Do you keep personal data on it?*
- *If not, why not?*
  - Juror may not trust the technology
  - Juror may have issues trusting computer evidence
- *Do You Consider Your Computer Private?*
  - Do you have a password?
  - Do you tell your spouse your password?
  - Do you share an email account?
  - Do you use encryption?





# DOES NOT USE THE INTERNET TO STEAL

---

- *How a juror builds their movie and music collection speaks volumes as to how they will view the theft of the data and IP property of others*
- *Ever used a peer to peer download site?*
  - Music pirating
  - Limewire for movies
  - FTP sites for pictures
- *Does digital form give you a greater right to use it?*
- *What is a fair use?*



# DOES NOT USE THE INTERNET TO STEAL

---

- *Do you use iTunes?*
  - Do you buy from the store?
  - Values online info and is willing to pay
- *Have you ever listened to a podcast?*
  - Tech savvy and comfortable with online transactions
- *Do you think musicians should be able to limit the use of their songs online?*



# USE OF DIGITAL PRESENTATION TOOLS

---

- A juror that uses PowerPoint
  - Comfortable with digital presentations
  - Will expect quality exhibits in court!
- ***Do you use PowerPoint?***
  - In your business?
  - In class?
  - During a sales pitch?
- ***Do you make your own PowerPoints?***
  - Easy or hard?
  - A juror who has had to make a PowerPoint can be forgiving of presentation issues





# HOW DO YOU GET YOUR NEWS?

---

- **Do you get a paper?**
  - Do you buy from the store?
  - Values online info and is willing to pay
- *Do you subscribe to an RSS?*
  - Tech savvy
  - Comfortable with online data sources
- *How do you get your news?*
  - How do you know it is reliable?







# MAKES GROUP DECISIONS

---

- A juror that is comfortable with the give and take of group decision making is a juror who can work within the jury decision process
- *How are decisions made at your work?*
  - Military style?
    - Does your boss make all the decisions?
  - Collaborative?
    - Is there a group decision making process?
    - Are you involved in the process?
- *Do you prefer to work alone?*
  - Do meetings drive you crazy?
  - Do you avoid group projects?







# MAKES GROUP DECISIONS

---

- *Ever given a group presentation?*
  - Did everyone worked together?
  - Did you work as group?
  - Did you carry others?
- *Do you use meeting tools?*
  - Outlook scheduling?
  - Planning software?
- *Do you use an organizer?*
  - Electronic calendar?

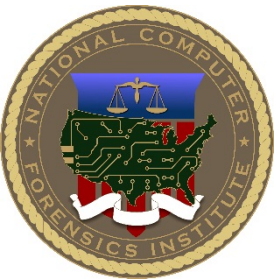




# COMFORTABLE WITH AUTHORITY

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- Many tech crimes involve the violation of unclear lines of privacy and ownership
- People comfortable with applying rules to different scenarios are great tech jurors
- ***Who are you responsible for?***
  - Family members?
  - Co-workers?
- **Have you had to discipline someone?**
  - Parent?
    - Who is the disciplinarian?
    - How do you deal with new issues and problems?
  - Co-workers?
    - Is there a discipline process?
    - Have you ever used it?



# COMFORTABLE WITH AUTHORITY

---

- *At your place of work, or school*

- Is there a computer use policy?
  - Is it followed?
- Is there a login banner?
- Are you monitored?
- Can you BYOD?
- Social media allowed?
  - Policy on posting?
  - Tweet for business?





# TECH IS A TOOL

---

- The goal is to find a juror who is familiar with technology, but does not ‘love’ it and see technical solutions to all problems
- *Are you are early adopter?*
  - Lined up for a phone?
    - How long do you keep a phone?
- *Blogged or posted about tech?*
  - Do you have a blog?
    - Viewership?
  - Do you tweet?
    - How many followers?



# TECH IS A TOOL

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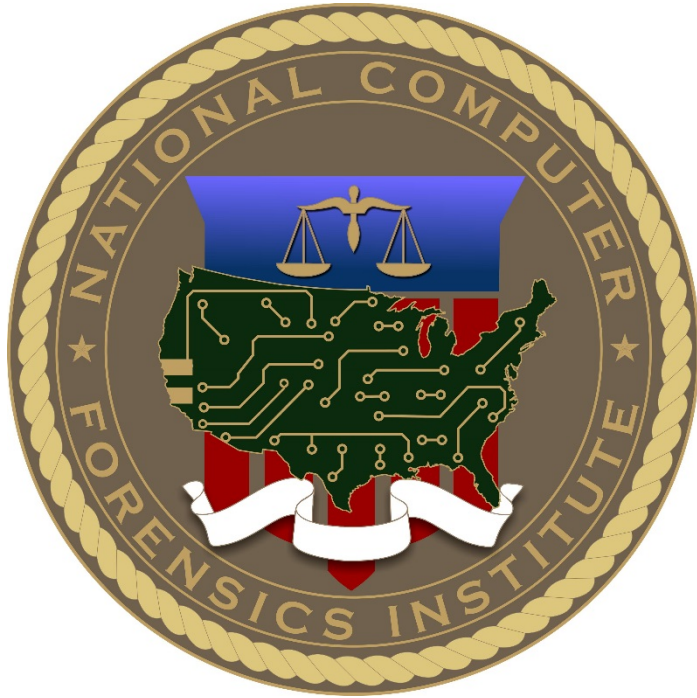
- *How many computers in your home?*
  - Phones?
  - Tablets?
- *Do you have any of the following certifications?*
  - CISSP
  - A+ or N+
  - Any other technical certifications?



# TECH IS A TOOL

---

- *Do you own or use?*
  - Pulse pen or a digital recorder?
  - More than one phone?
- *Are you your family's personal "Geek Squad?"*
  - Side tech business?



*SAMPLE VOIR DIRE QUESTIONS  
FOR JURORS*





# SOCIAL NETWORKING

---

- Twitter
  - Social commentator
- Instagram
  - Younger, more social
  - Ask about friends and posts
- Facebook
  - Older, more educated
  - Connected, loyal
- LinkedIn
  - Business focus
  - More affiliated
  - Status conscious...





# PEER TO PEER

---

- Old sites
  - Napster, Kazaa, Limewire
  - Use of these file share sites is usually for the trade of movies or music
  - Juror does / did not value IP rights
- New sites
  - Megaupload
  - BitTorrent
  - Shareaza
  - Ares Galaxy



# TECHNICAL CAPABILITY

---

- *Do you use a computer at home, school, or work?*
  - For what?
  - Describe what you do when you are on the computer?
- *What type of computer is it?*
  - How they answer will tell you all you need to know
  - Number and type of computer may be indication of either proficiency or lack of sophistication



# TECHNICAL CAPABILITY

---

- *Do you use the internet at home, school, or work?*
  - For what?
  - Describe what you do when you are on the internet?
- *Have you ever....?*
  - Tweeted or posted online?
  - Bought something online?
  - Been in a chat room? (describe that experience)



# USE OF THE INTERNET AND TECHNOLOGY

---

- Do you expect to be protected while on the internet?
- If you conduct business online, do you assume the risk of being victimized?
- What must a person do to protect themselves online?
- Should the same laws apply to online conduct?
- Would you consider a criminal who uses a computer more or less of a threat?
- More or less criminally sophisticated?



# USE OF THE INTERNET AND TECHNOLOGY

---

- Does anyone have an image in their mind when I use the term “hacker”?
- Has anyone experienced the damage that can be caused by a computer virus? (describe it)
- Is there anyone here uncomfortable with the idea of someone having uncontrolled access to their personal information?
- Should a victim be required to take steps to prevent an intentional intrusion?



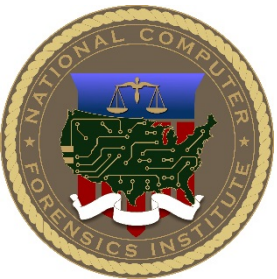
# USE OF THE INTERNET AND TECHNOLOGY

---

- *The juror's description gives you a window into their worldview of hacking*
- The hacker as a “*modern freedom fighter*”
  - Edward Snowden
  - Anonymous
  - Wikileaks
- Shadowy terrorist
  - PLA (China)
  - Die hard villain



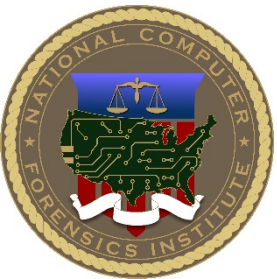




# SEX OFFENSES AND ONLINE CHILD EXPLOITATION

---

- Does anybody feel the subject matter alone would make it impossible for them to be fair?
- Have you, a relative, or a close friend ever been sexually victimized? (instruct them they need not answer in open court)
- Will anyone find it impossible to view graphic sexual images of young children?
- Does anyone disagree with the laws prohibiting sexual activity between adults and children?



# SEX OFFENSES AND ONLINE CHILD EXPLOITATION

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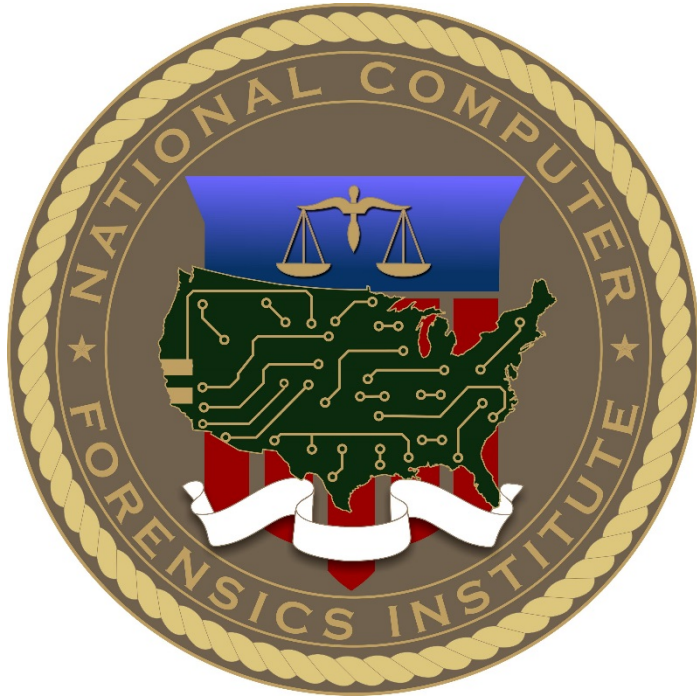
- The images in CP cases disturb most people
- The jury must be able to be fair, and to review the evidence
- Jurors can get angry at the prosecutor for introducing too much evidence
- Many victims never report (court should not force them to relive personal horrors)
- Some people disagree with all limits or laws on sexual activity, and consider such laws as prudish or outmoded



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## *DISCUSSION & QUESTIONS*