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The ABC's of Religiosity

Attitude, Belief, Commitment, and Faith

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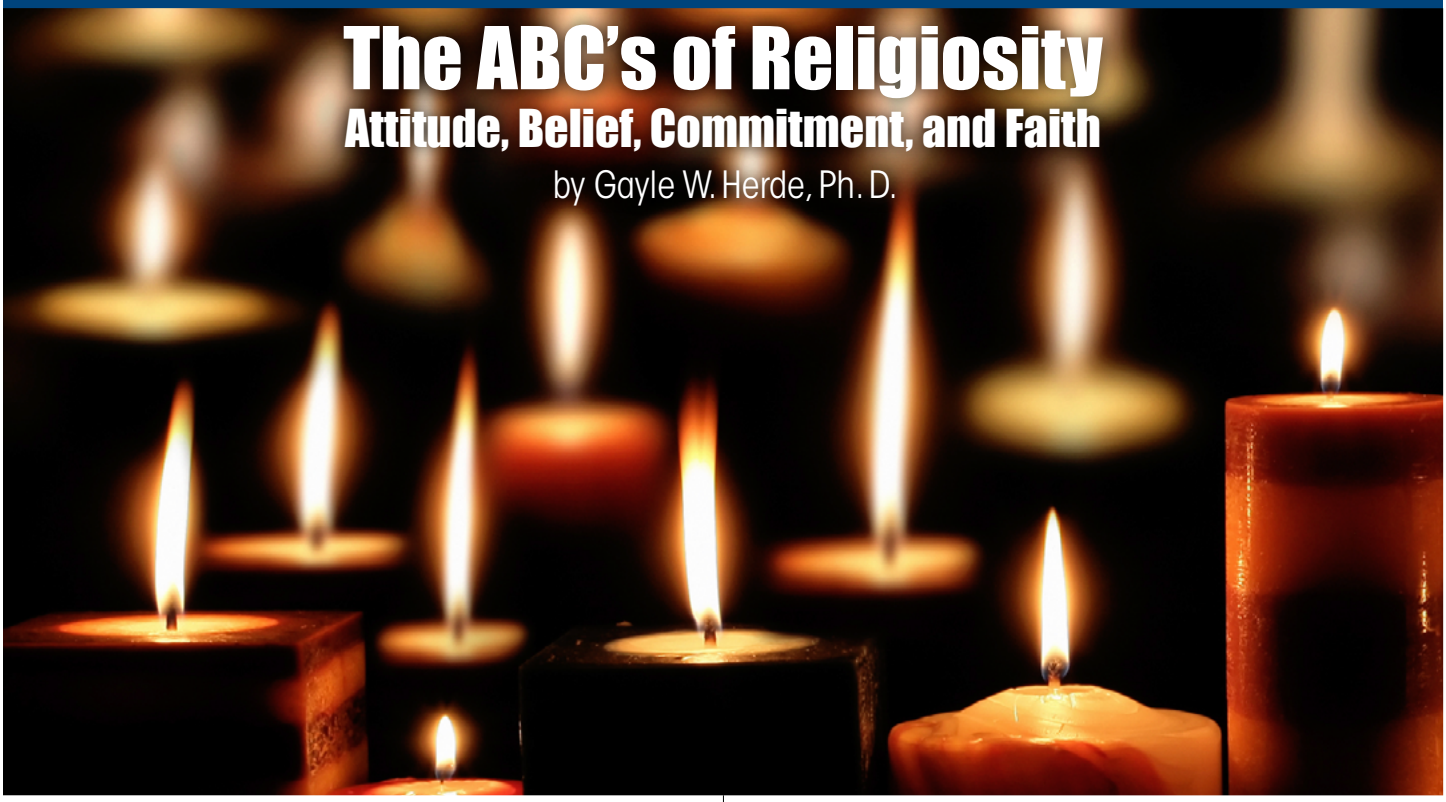

JURORS ARE TRADITIONALLY EXPECTED to leave their prejudices at the door of the deliberation room. However, there is no way to separate a person from his or her worldview: religion, or the absence of it, is a major contributing factor. According to the Pew Forum (2008), religion is "very important" or "somewhat important" to 82% of the people in the United States. Over 70% of the population believes in God or a universal spirit with "absolute certainty," while another 17% is "fairly certain." This is a constituency much too large to be overlooked.

A juror's religion or spiritual practice, religious upbringing or background and general attitudes toward religion can and likely will inform their thoughts about your case, both overtly and covertly. Cases that will activate their religious orientation on a conscious level might involve First Amendment issues, clerical abuse or simply the concept of right vs. wrong as filtered through religious teachings. There are those with undertones of morality, such as immigration, abortion, or the death penalty, especially when a church or other religious body has taken a position or handed down an opinion. There are categories of personal responsibility that might be referenced in tort litigation, or perhaps lifestyle issues. That is, does one party or the other live their lives or conduct himself or herself in a way that could be considered immoral? Perhaps you are using a religious proverb for your case theme, such as "let the one who is without sin cast the first stone."

In an ideal world there would be a "one size fits all" scale of religious thought and practice that would inform the attorney's judgment about potential jurors. The problem with trying to establish a single measure of religiosity is the extreme diversity of traditions and customs and their influence on mindsets. You can have a Buddhist, a Unitarian Universalist and an independent-fundamental-premillennial-King-James-version-only Baptist, all equally sincere and dedicated, all of whom could score equally high in religiosity, and yet have vastly different opinions of the same case, not only because of the differences in the religions but also in how those religions were taught and adopted by them.

What is to be done then when the time comes to de-select or exercise peremptory strikes with a jury panel? Examining various dimensions of religiosity is an important factor. A

supplemental juror questionnaire (SJQ) is extremely useful to determine the strength of each individual's commitment to his or her view. When the SJQ is supplemented with probing and specific voir dire, the attorney is able to make the most strategic use of the challenges available.

This article will give an overview of several dimensions of religiosity, including extrinsic versus intrinsic motivation, religious identity, beliefs, public and private behavior, and factors showing the level of commitment. There will be general information on the geographic distribution of various faith traditions around the country. I will give special attention to atheists and "nones" – persons, especially the current generation of Millennials, who describe themselves as unaffiliated with any organized religion. This article will touch on the association (or lack of it) between religion and political persuasion, as well as how religion can impact decision-making and end with specific strategies for juror questionnaires and voir dire.

There are people who attend church, synagogue, or mosque services once or twice a year; there are others who attend services once or twice a week, not including meetings of various committees on which they serve. They may all categorize themselves as Christians, Jews, Muslims, or something else, but their level of commitment differs greatly. It is not enough to know what religious labels people attach to themselves; this only encourages the use of stereotypes. Instead, you should attempt to learn more about the depth of their religiosity. According to Barna (2013),

> "It is increasingly necessary to have aggregate indicators – that is, multi-dimensional research – that describe the rich and variegated experience of spirituality and faith."

Religiosity is a difficult construct to define, as it means different things to different people. Tien Ren-Lin (2008) defined it as "the way people and communities are influenced by religious ideas and shape social reality accordingly," while Singhapakadi, et al. called it "the faith that a person has in God and the extent to which they are pursuing a path considered set by God" (2013, p. 184). For discussion purposes, it is broken down more specifically, using extrinsic and intrinsic motivation, identity, belief, behavior, and commitment.

Extrinsic and Intrinsic Motivation

Singhapakdi, et al. (2012) studied the impact of "love of money" and religiosity, as measured by extrinsic and intrinsic dimensions, on ethical intentions governing decision-making by business managers. Extrinsic religiosity refers to religious practices for essentially utilitarian or selfish reasons, such as social approval, to get married or to further one's business or career interests. Intrinsic religiosity, on the other hand, is practiced with interior or selfless motivation, perhaps serving the common good or serving the religion itself (p. 184-185). The study found that managers high in intrinsic religiosity were more ethically intentional than those high in extrinsic religiosity. Additionally, the impact of intrinsic religiosity on ethical intentions was greater by orders of magnitude than extrinsic. This could be because intrinsically-motivated managers "internalize ethical principles as a part of their moral identity," as well as internalizing their commitment to religious principles as part of their daily life (p. 185, 188).

For purposes of jury selection, these concepts might apply to those who integrate their religion into their lives in ways intended to raise their social or business standing in contrast to those who have little interest in elevating their social or business standing, but are more likely to consider their religion as a "way of life" rather than a "part of life."

Religious Identity

Religious identity is formed in different ways. Persons who come from countries where the laws stem from the national religion, such as certain Islamic countries, identify much more closely with their religion, as it has a strong cultural and societal component. Some traditions initiate infants or young people into their congregations by ceremonies such as baptism, or *bar-* or *bat mitzvah*, leading to the potential for a lifelong identity as a follower of that tradition. On the other hand, many persons born in the U.S. have been inculcated with the doctrine of the separation of church and state; therefore, their religion may inform their worldview, but may be less dominant as a guiding force for their overall outlook.

Belief

Belief in God or other universal spirit is a central tenet of most faiths and traditions in the U.S. Groups highest in absolute certainty in that belief include Jehovah's Witnesses (93%), evangelicals, Mormons and historically black churches (all at 90%), Muslims and "other Christians" (both at 82%) (Pew Forum, 2008). As a matter of interest, 73% of "mainline"[1] Christians, 72% of Catholics and 41% of Jews believe with absolute certainty.

Another revealing aspect of faith is belief in the Bible or other holy book. Of those asked, 62% of the members of historically black churches believe that the Bible is inspired by God and is literally true word for word, followed by evangelicals at 59% and Muslims (50%) regarding the Qur'an (PewForum, 2008). The majority of Buddhists (67%), Jews (53%) and Hindus (47%) believe that men wrote their holy books and they are not the word of God.

Perhaps one of the most telling indicators of religiosity is the belief that one's own faith is the only path to "salvation" or "eternal life," as opposed to multiple paths (the most frequently selected response by most groups). Holding to this belief can be very divisive in an increasingly diverse and pluralistic society. Eighty percent of Jehovah's Witnesses feel this way, as do Mormons at 57%, followed by evangelicals (36%), historically black churches (34%), and Muslims (33%) (PewForum, 2008).

Behavior

Two types of behavior can demonstrate religiosity: public and private. Attendance at religious services is one such public marker. Jehovah's Witnesses attend services far more often than any other faith group, with 82% reporting that they attend once a week or more (PewForum, 2008). Mormons follow closely behind at 75%, while evangelical and black church members report a rate of attendance of 58% and 59% respectively. While attendance is not a measure of an intrinsic commitment, it demonstrates a willingness to give up a valuable resource in this society, one's time.

Private behavior includes activities such as prayer, meditation, or reading. The majority of nearly all religious groups, Christian and non-Christian alike, reported praying once or several times every day, ranging from 89% of Jehovah's Witnesses to 42% of "other faiths" (PewForum, 2008). Jews were the exception, with the majority (27%) stating that they seldom prayed. (It should be noted, however, that only one percentage point separated that group from those Jews who prayed daily or more, 26%.)

Commitment

Commitment to one's religion can be evidenced by public and private behavior, but also by the dedication of resources, such as time or money; some will even risk their social standing through active communication of their beliefs. Many Christians believe they should give 10% of their income to their local congregation. Muslims are required to contribute to the poor. People high in religiosity probably spend time at their place of worship in activities apart from worship, such as teaching or work on committees, or in service areas such as homeless shelters or soup kitchens. They may contribute significant portions of their income supporting their local congregation or national denomination, or supporting others who are doing work in foreign countries; they might even spend days, weeks or months, doing work away from home themselves. Muslims are expected to go on Hajj (i.e., visit to Mecca) at least once in their lives. They might make a regular practice of speaking to friends, strangers, and even family members about their faith at the risk of alienating them. Young Mormon men that are "worthy and who are physically able and mentally capable to respond to the call to serve" are strongly encouraged to participate in missionary work, both in the United States and abroad (Monson, 2012).

Geographic Dispersion

When a trial will have a spiritual aspect of one form or another, it may be easier for the attorney to question the panel knowing what to expect with regard to their likely religious persuasion. Nationally, evangelical churches represent the highest percentage of followers (26.3%) in the United States, followed closely by Catholics (23.9%) and mainline churches (18.1%) (PewForum, 2008). But not all faiths are spread evenly throughout the country. Here are some broad categories of regional distribution:

- Evangelical and mainline churches and Jehovah's Witnesses are found primarily in the South and least often in the Northeast.
- Historically black churches and Muslims reside chiefly in the South but least often in the West.
- Catholics are somewhat evenly dispersed throughout the country, but appear slightly more often in the Northeast.
- The vast majority of Mormons are in the West, as are Buddhists.
- Persons of the Orthodox faiths (Greek, Russian, Serbian, and so on) and Jews are mostly in the Northeast, seldom in the Midwest.
- Many Hindus can be found in the South and West, less often in the Northeast.
- Those unaffiliated with any church (atheists, agnostics, and others) appear most often in the South and West and (perhaps surprisingly) less often in the Northeast.

Atheists and "Nones"

Considering the rate at which the group of self-reported atheists and persons unaffiliated with a tradition is growing, it deserves separate consideration. For purposes of this discussion, "atheists" describes persons with no belief in any deity. "Nones" (also "unaffiliateds") is a term describing persons who do not deny the existence or knowability of a deity but who subscribe to no particular faith tradition and might, in fact, consider themselves spiritual. It is unclear how many atheists there are in America: extrapolating from the Pew data (2008), 5% of respondents reported that they do not believe in God. On the other hand, Keene and Handrich (2010) reported a Gallup finding from 2009 saying that atheism is the "third largest belief group in the United States (behind Catholics and Baptists)." The disparity between the two surveys might be explained by the perceived discrimination faced by atheists and their subsequent reluctance to admit their lack of belief publically. The Mosaic Project conducted a survey and found that nearly half (47%) of Americans would disapprove of their son or daughter marrying an atheist or non-believer, a much greater percentage than those disapproving of a marriage to various other ethnicities or religions (Keene & Handrich, 2010).

Although being unaffiliated with a faith tradition is nothing new, the numbers currently being reported are new. As of 2012, Pew found that 20% of Americans have no religious affiliation, the highest number since Pew began polling on this issue. One third of those are adults under 30, the so-called "Millennial Generation" or "Generation Y." Twenty-five percent of the Millennials raised Catholic have left the faith, while 41% of persons raised in mainline churches have left (Jones, 2012). Overall, while only 11% were raised in unaffiliated homes,

25% report themselves unaffiliated, an increase of 14% (Jones). The Millennial generation is highly multi-cultural and inclusive. While they believe that Christianity contains positive attributes, they also find in it closed-mindedness, judgmentalism, hypocrisy and alienation (Putnam & Campbell, 2010, in PewForum, 2012; Jones, 2012).

However, it would be a mistake to assume that the "nones" are not spiritually-minded. One-third of them report praying at least daily and 25% attend church services weekly, although Millennials living at home with their parents are no more likely to attend than Millennials overall (Jones, 2012). Fully two-thirds of them believe in God, a third call themselves "spiritual" (but not religious) and many of them believe that religious organizations are good for aiding the poor and creating community bonds, though too focused on politics, money and rules (PewForum, 2012).

Political Persuasion

It is notoriously difficult to predict political persuasion from religion (and vice versa). However, at least one association can be made: the unaffiliateds, especially from the Millennial generation, are more likely than not to be Democrats and to describe themselves as liberals rather than conservatives (PewForum, 2012). Sixty percent of unaffiliated persons said they are registered Democrats. Furthermore, in an examination of the religious composition of the Democratic party, unaffiliateds were the largest group at 24% of the total. They have views considered to be liberal: 72% of all unaffiliateds (not just Millennials) believe abortion should be legal in most or all cases, while 73% support same-sex marriage, compared with 48% of the population overall. Seventy-five percent voted for Barack Obama in the 2008 election (PewForum).

Apart from the religiously unaffiliated, religious intensity seems to be a somewhat better predictor of political persuasion than the faith or denomination of a person. In a study performed by Gallup (Newport, 2009), there was evidence of a correlation between religiosity and politics: non-Hispanic whites who were highly religious (based on church attendance and the self-reported importance of religion in their lives) were more likely to be Republicans, 62% among the highly religious compared to 28% Republican affiliation of those not religious. Conversely, highly religious whites were Democrats only 28% of the time, while non-religious whites were Democrats 56% of the time. African-Americans and Hispanics skewed strongly Democratic, regardless of their level of religiosity.

Religiosity and Decision-Making

A person's worldview has an impact on their judgment that has been demonstrated by multiple studies and mock juries, as reported extensively by Lindsey, et al. (2008) and Millares (2009). Attitudes on social issues stem from deeply held beliefs (Unnever, et al., 2006). For example, regarding religious labels (more superficial than cultural-religious identity, but still useful) and similarity, Christian and Jewish mock jurors were more lenient to defendants with whom they identified on a religious basis (Kerr, Hymes, Anderson & Weathers, 1995, in Lindsey, 2008).

Literalism, as a subset of the Belief dimension, may be a good indicator of punitive attitudes. Those who believe "the Bible is the literal word of God and should be interpreted literally" are more likely to support the death penalty specifically (Leiber &Woodrick, 1997; Miller & Hayward, 2008) and harsher penal sentences generally (Evans & Adams, 2003; Greer, et al., 2005; Unnever & Cullen, 2006). Literalists are considered to be fundamentalists because of their evangelistic zeal and behavior (Grasmick, et al., 1993; Unnever, et al., 2005), which may in turn stem from their commitment to the belief that there is single path to eternal life.

This belief in a "single path" is also strongly related to authoritarianism (Altemeyer, 1996; Altemeyer & Hunsberger, 1992; Kirkpatrick, 1993; Laythe, Finkel & Kirkpatrick, 2001). Many religions, including a number of Christian denominations, are highly authoritarian in structure and belief and can be attractive to people with a deep-seated respect for persons in authority. As a result, those jurors are more likely to demonstrate that respect by siding with the prosecution in criminal cases as the representative of the state, as well as of law and order.

In 1904, Max Weber coined the term "Protestant work ethic," and used it to describe a spirituality that is accompanied by hard work and frugality, eschewing worldly luxuries. Some persons called for jury duty may believe that American society is still a reflection of this philosophy. Persons from conservative Protestant denominations are likely to side with the defense in civil trials for at least two reasons: first, the presumption of innocence carries the authority of law (Authoritarianism, above); secondly, because the work ethic carries with it a potential bias in favor of the defendants who "worked to earn their money," as well as a possible corresponding lack of sympathy toward plaintiffs perceived to have a "victim mentality" or who might be "gaming the system" or lack "deservingness" and might squander their financial recovery in "high living." Furthermore, they could possess beliefs opposed to litigation generally, feeling that it is "up to God to right wrongs or take vengeance," or relying on karma "to even things out."

Finally, there is a strong sense among religious Protestants of taking personal responsibility for one's actions that often plays against plaintiffs. According to Engel (2009), there is an assumption that "religiosity in American society…leads inevitably to a view of causation based on the ethic of individual responsibility….[and] is opposed to the use of tort law to obtain compensation for injuries that are, in the most basic sense, the fault of the injured person" (p. 266). For example, in the recent claim brought by the family of the late celebrity Michael Jackson against his tour promoter, no liability was

found on the part of the promoter for hiring an incompetent doctor to care for Jackson. According to USC law professor Jody Armour, "The jury decided the case on the notions of personal responsibility, and concluded that Michael Jackson had some responsibility in picking [Dr. Conrad] Murray and creating the circumstances surrounding his own death" (Kelsey & Feldman, 2013).

Religiosity and Jury (De-) Selection

As mentioned above, simply applying a denominational or religious label, perhaps even found on the juror form provided by the court, is a poor method of determining religiosity. Multiple dimensions should be examined. For example, extrinsic and intrinsic religiosity can be a measure of ethical intentionality, as well as a measure of commitment to one's religious principles. Other dimensions of religiosity include belief, especially regarding belief in a universal deity, the literal interpretation of a holy book, and the belief in a single path to eternal life; public and private behavior; and commitment. Below I will address how to deal with these in the contexts of juror questionnaires and voir dire.

Supplemental Juror Questionnaire

Questions about today's hot-button social issues, such as abortion, gay marriage and gay ordination, might seem to be revealing about a person's religious orientation, but that can be deceptive. Gay marriage is especially polarizing (consider, for example, the Duck Dynasty controversy). Jurors will often be reluctant, in open court, to truthfully answer questions that go against what they perceive to be the current stream of popular opinion. Inquiries into that issue and others are best incorporated into the privacy of a Supplemental Juror Questionnaire (SJQ).

This list of potential questions goes to each of the dimensions. They should include response choices ranging from Strongly Agree to Strongly Disagree, as well as a Not Applicable option for the unaffiliateds or atheists:

- *I try to hard to live my life according to my religious beliefs.* [Intrinsic motivation] (Singhapakdi, 2012)
- *It doesn't matter much what I believe, as long as I am good.* Intrinsic motivation, reverse scored
- *I believe in God / universal spirit with absolute certainty.* [Belief: God]
- *I believe that the Bible / holy scriptures is the inspired word of God and should be taken literally word for word.* [Belief: literalism]
- *I believe that my faith is the one true path to eternal life.* [Belief: single path]
- *I always state my opinion unequivocally on social issues, even if it might make me unpopular.* [Behavior: public]
- *I would rather engage in reading or meditating on my faith than many other types of activities.* [Behavior: private]
- *I have traveled for a reason related to my religious beliefs or activities.* [Time or financial commitment]
- *I make a regular practice of telling others about my religion.* [Emotional commitment]

A social scientist familiar with religiosity would be able to draw conclusions based on the responses and help make recommendations for follow-up questions during *voir dire*, as well as establish a preliminary list of challenges. This will also be useful in case a question arises about discrimination based on religion.

Voir Dire

You will have read this before in *The Jury Expert*, but it is important enough to bear repeating: The primary focus of voir dire should be to elicit and gather information from the panel, and less about persuading the panel. It is a time to ask them open-ended questions and follow up on their responses to the SJQ. Your ultimate goal is to find out how, if at all, their beliefs will impact their deliberations and judgment.

Open up voir dire with an acknowledgement of the very personal turn that your questioning is about to take: *I'd like to move for a moment to the subject of religion. I know that some of you may be very open about your religious beliefs and practices and some of you may feel this is private. I'd like all of you to please be as candid with me as possible. We're not here to judge anyone's opinions or beliefs; we just simply want to know what they are.* When questioning an individual directly, especially a person who is potentially of a non-Christian or less predominant religious persuasion, it must be done with sensitivity and respect, avoiding any references or language that might single them out as "different" or in any way hold them up to ridicule.

If there is someone from another country, such as India, in the pool, the initial religious question series could flow something like this: *I understand you're from **(country)**, which is very diverse, correct? Does it have a number of ethnic groups, languages, faiths and traditions? What are the languages? Do you speak (one of those languages)? What are the religious traditions? Do you follow one of those? How do you think your belief might impact your participation on this jury / influence your thinking in this case?* Then to the group generally: *Who else believes their faith might have an impact on their work on this case?*

If a person has responded that they have traveled in behalf of their religion (e.g., Hajj to Mecca, missionary trips to developing countries, or tours of the Holy Land), ask for a few details, such as where they went, when and why. If they are

open, ask them how they were impacted by the experience. Listen for extrinsic (*I loved seeing another country*) versus intrinsic (*It brought me much closer to God*) responses. Gently inquiring into these activities can provide a gauge of religiosity without asking directly about time and monetary investment.

Another area, very revealing though perhaps far more sensitive, is a person's reason for joining their religion. This line of questioning could begin very generally: *There are many reasons that people follow a particular religion – they might have been raised with it, they might have converted for a variety of reasons. Who here is willing to share with me why they are a part of their religion?* Again, listen for extrinsic (*To marry my husband*) and intrinsic (*I looked into it and found it led me closer to God / universal deity*) reasons. Don't forget the atheists and unaffiliated persons: ask if they would be willing to share their reasons. Above all, the conversation must be non-judgmental and non-confrontational.

Many unaffiliated persons have a spiritual side, despite not adhering to an established religion. Explore that by asking: *Is there anyone here who does not attend a place of worship but still has a spiritual side or engages in spiritual practices like meditation or prayer? What do you do, if anything, to nurture your spiritual life?*

Religiosity and Legal Challenges

While challenges based on religion are proscribed in multiple jurisdictions (e.g., Colorado in *Fields v. People,* 1987, 732 P.2d 1145; New Jersey in *State v. Fuller,* 2002, 812 A.2d 389; California in *People v. Wheeler,* 1978, 583 P.2d 748, all in Bornstein & Miller, 2005), it is less clear whether challenges are prohibited on basis of *degree* of religiosity. An SJQ using measures of religiosity, similar to the questions above, can be very useful in justifying a challenge; it can be used to demonstrate that the challenges were exercised based on degree and dimension of religiosity, rather than on a single denomination or tradition.

Religiosity is a vital and inherent foundation that has far-reaching influence upon an individual's rationale for decision-making. Whether reliance upon religious convictions is conscious or unconscious, in their brain or in the "heart," there is no denying the influence the spiritual core of a person has upon the filters through which they sift information and arrive at a conclusion. Not to consider this factor when screening jurors would miss tapping into critical attitudes and experiences that a person brings into the jury room, no matter how unbiased they may claim to be. To quote an old proverb, "Keep thy heart with all diligence; for out of it are the issues of life."

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[1]"Mainline" is defined by Pew Forum for this purpose as Protestants who did *not* affirmatively answer the question, "Would you describe yourself as a born-again or evangelical Christian or not?" ("Nones" on the rise, footnote 5.)