

# Voir Dire Concepts

March 14, 2014

## Major Topics

- Theory of jury selection
- Planning for jury selection
- Roundtable

## Theory of Jury Selection – “Jury Deselection”

- Three I's of jury selection
  - o Identify (jurors you don't want)
  - o Inform (jurors about the law & your case)
  - o Impression (you leave on the jury of yourself)
- **Identify is first priority** – allow the wrong juror & you'll lose/hang
  - o **You must get them talking!!**
  - o **If you do all the talking, you won't learn who to kick**
- I look for jurors with a stake in an orderly society
  - o Long-term jobs
  - o Long-term marriages
  - o Jurors with adult kids with good jobs/education
  - o Jurors with young kids
  - (Another DDA says: People I could have lunch with)
- I am very cautious about people who have much more prestige than typical jurors and people who are marginalized by societal norms
- **“Inform”**
  - o Introduce your theme
  - o Expose jurors to potential problem areas of your case
    - Word your question so a response ID's a juror you don't want
    - If they won't go with you, you've ID'd a juror you don't want
  - o Expose jurors to the law, particularly novel areas of the law
    - Word your question so a response ID's a juror you don't want
    - If they disagree with the law, you've ID'd a juror you don't want
  - o Re-habilitate fence-sitters
- **“Impression”**
  - o Trust, Confidence, Professionalism

### **Planning for Jury Selection**

- Identify potential problem areas for your case
- Identify potential problematic jurors
  - o Those opposed to your theory/theme
  - o Those opposed to your client's position
- Identify legal doctrines you'll want to discuss
- Plan to weave your theme into questions
- Plan your questions for each area identified above

### **One Way to Do It**

- **3 Categories**
  - o Jurors I know I don't want (3)
  - o Jurors who will be acceptable (2)
  - o Jurors I'm undecided about (2-3)
- **Theme** – Introduce your theme of the case to the jury / define the terminology
  - o Good Samaritan laws vs. defense of others
- **Memorize the names**
- **Questioning**
  - o Powerful language first question
  - o Broad questions to the group – raise your hand
  - o Craft questions to expose bad jurors, not good jurors
  - o Follow-ups with people who came to light during prior questioning
  - o Communicate to other jurors why someone is unsuitable

### **What You Cannot Do**

- You cannot excuse jurors based on their membership in a protected class / cognizable group:
  - o **Don't violate the rules – ever.**
- You cannot tell the jury the facts of your case
- You cannot ask jurors how they would vote if the facts were a particular way

### **Roundtable on Common Issues in Misdemeanor Jury Selection**

- **Driving Under the Influence**
  - Common weaknesses
  - Common defenses
  - Common biases
  - Prior convictions among jurors
- **Other types of misdemeanor cases as requested**